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A GUIDE TO
LEGISLATION AND LEGISLATIVE PROCESS
IN BRITISH COLUMBIA

PREPARED BY:

Office of Legislative Counsel
Ministry of Attorney General
Province of British Columbia

August 2003

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A GUIDE TO
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There are 2 types of law that govern our lives in British Columbia.

> ***Common law*** is the law established by our courts in response to specific fact situations that come before them in the course of civil litigation or criminal prosecution.
>
> ***Legislation*** is the law of general application made by or under the authority of the applicable parliamentary body. It may be primary legislation – that is, law made directly by Parliament or a Legislative Assembly in the form of statutes. (These are also commonly known as "Acts".) Or it may be subordinate legislation – that is, legislation made by another body or person under the authority of an Act. (Cabinet regulations and municipal bylaws are examples of subordinate legislation.)

This guide has been prepared by the Office of Legislative Counsel to provide an overview of the preparation, enactment and form of statute laws in British Columbia.

The guide is presented in 5 separate components.

Part 1 – The Legislative Process

> This component describes the usual process by which a government initiative becomes an Act, from concept through drafting by Legislative Counsel to consideration by the Legislature and enactment.
>
> We hope it will be useful to all persons who are involved at any stage of this process.

Part 2 – Principles of Legislative Drafting

> This component describes some of the key principles that apply to how legislation is drafted in British Columbia, including both legal principles of statutory interpretation and the Office of Legislative Counsel style principles that guide the form and language of our statutes.

We hope it will be particularly useful to persons who are directly involved in the drafting process or who are responsible for working directly with legislation after it has been enacted.

Part 3 – Guide to Preparing Drafting Instructions

This component provides information about the purpose, form and content of effective drafting instructions to Legislative Counsel and a checklist of key matters that need to be considered.

It is directed primarily at officials within government who are responsible for preparing those instructions and working with Legislative Counsel in the drafting process.

Part 4 – Statute Revisions

Most Acts in force in British Columbia are "revised statutes" that were prepared in the course of a "statute revision". This Part describes the authority and process for statute revisions.

Part 5 – Statute Publications

This component provides a brief description of government statute publications and how to access the different forms in which the publications are provided.

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A Guide to
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PART 1

THE LEGISLATIVE PROCESS

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PART 1 – THE LEGISLATIVE PROCESS

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PART 1
THE LEGISLATIVE PROCESS

The legislative process involves a number of different stages and a number of different people, all with a single goal — to create a piece of legislation that gives legal effect to government policy in a form that clearly communicates the policy to those who are required to obey it and to those who are required to administer it.

There are three requirements to meet that goal:

a fully considered and formulated policy;
a precisely and clearly worded text;
a thorough review and assessment by the Legislative Assembly.

These three requirements form the framework for the stages through which a government proposal must go before it becomes law.

Stage 1 – Policy development: In this process, a problem or initiative is identified, issues are analysed and options reviewed. If legislation is a recommended option, this stage will produce a formal submission to Cabinet requesting approval of the legislative proposal. If this approval is given, the project will proceed to the next stage.

Stage 2 – Drafting the legislation: Legislative Counsel and instructing officials from the responsible ministry work together to prepare legislation that implements the policy reflected in the approved Cabinet submission. The drafting stage culminates in Cabinet approval of the draft legislation.

Stage 3 – Enacting a law: The proposed legislation is introduced as a government Bill for enactment by the Legislature. It is debated in the House and, if approved by the Legislative Assembly, becomes law when it receives Royal Assent from the Lieutenant Governor.

Each of these stages is described separately in the following pages.

Stage 1 – The Creation of Legislative Policy

Policy development

Before drafting pen is ever put to paper (or fingers to keyboard), an enormous amount of work must be done to refine the policy that the government wishes to pursue.

Policy development is usually done by the ministry that will be responsible for administering the legislation. The proposal may be in response to an issue identified by the ministry itself. In other cases, the issue will have been identified by another minister or by outside parties. In some cases, outside parties will have actively lobbied the minister or the ministry for the specific outcome that is being proposed.

A substantial amount of information must be gathered and assessed before the policy initiative can proceed to a proposal for legislation and the drafting stage. For example, ministry staff must determine:

- what specific outcome is required and why;
- whether legislation is in fact needed for that outcome;
- what legislation should be changed or created to give effect to that outcome;
- how the proposed policy will impact on other legislative schemes both inside and outside the ministry;
- what successes or failures other jurisdictions may have had with similar policies and what can be learned from their experiences;
- what impact the proposed policy will have on interests inside and outside of government, and how those interests might react to the changes.

The Request for Legislation (RFL)

If a ministry wishes to proceed with a legislative initiative, it will prepare a formal Cabinet submission known as a "Request for Legislation". An RFL must provide a thorough analysis of the problem and demonstrate a clear understanding of the proposed legislative solution and its potential impacts. It is the key document in setting the parameters within which all legislative drafting for the proposal must be done.

The form and content requirements for an RFL are established by the Cabinet Operations Office. Under these requirements, an RFL must:

provide a summary of the proposed legislation and the issue (or issues) it is intended to address;
give a brief legislative history;
explain any previous Cabinet decisions respecting the matter;
describe the consultations that have already taken place, including the degree of agreement with the proposed initiative and dissenting views;
indicate any further consultations that are required;
provide comprehensive drafting instructions.

The "Three Column Document": specifics of the proposal

After an RFL is submitted to the Cabinet approval process,Ministries must schedule a hearing at the appropriate Government Caucus Committee at which they present a document that deals with the specifics of the proposed legislative changes. As with the RFL, form and content requirements of this document are established by Cabinet Operations.

The document will:

describe the current legislative situation in relation to the matter,
describe the proposed change, and
provide the ministry's reasons for the change.

It does this in a three column format, hence the name.

A simple amendment will require a simple supporting document. A complex legislative proposal may require a much longer document. As an example of a simple supporting document, a proposed change to the composition of an advisory board might use the following:

Current	Proposed	Reasons
The maximum number of board members is 9, all of whom are appointed by the minister.	Increase the membership of the board from 9 to 12.	The increased membership will provide for better representation.

It is the combination of the RFL and the Three Column Document that sets the parameters within which all legislative drafting for an initiative must be done.

Drafting Instructions

Comprehensive drafting instructions are provided in the RFL.

[See Part 3 of this Guide (Guide to Preparing Drafting Instructions) for information on effective drafting instructions.]

Treasury Board Staff and Legislative Counsel comments

Comments of Treasury Board Staff and Legislative Counsel must be attached to each RFL when it is submitted to Cabinet.

Treasury Board is a committee of Cabinet that has statutory responsibility under the *Financial Administration Act* for government financial management. In addition to providing general support to this committee, Treasury Board Staff within the Ministry of Finance review RFLs to assess their anticipated impact on the financial position of the Province.

The Office of Legislative Counsel is part of the Ministry of Attorney General. It is responsible for drafting government Bills and regulations and for publication of enacted legislation. Legislative Counsel comments on an RFL will include consideration of the following:

whether legislation is necessary to effect the proposed changes;
whether the drafting instructions provided with the RFL are sufficiently detailed to allow drafting to begin;
whether the proposed legislation is major or minor in nature;
whether there are any conflicts with existing legislation, constitutional issues or other legal concerns;
how much drafting time will likely be required;
the recommended form of Bill for the legislation.

Ministry solicitor should assist with RFL preparation

RFLs should be prepared in consultation with the appropriate ministry solicitor.

Each ministry has available to it one or more of the solicitors within the Legal Services Branch of the Ministry of Attorney General, and those solicitors can provide to that ministry legal advice, contractual drafting, litigation support and support in the development of legislation.

Because these solicitors provide day-to-day legal advice to their client ministry, they have significant knowledge of both the business conducted and the legal issues faced by it. Their knowledge of the ministry and of the resources available in the Ministry of Attorney General is invaluable in the process of developing legislation.

Involving the ministry solicitor in the preparation of an RFL, or in developing policy for inclusion in an RFL, has numerous benefits.

- The solicitor may be able to provide advice respecting the legal process and what it requires or, conversely, may be able to show that new legislation is not required to meet the policy objectives.
- The solicitor is also able to provide advice respecting any additional legal analysis that may be necessary to determine the appropriate legislative solution to the problem.
- Involvement of the ministry solicitor at this early stage allows the solicitor to become completely knowledgeable about the intentions of the ministry so that he or she will be better able to provide effective legal support in the drafting process and to provide effective advice to the client ministry after the legislation is enacted.

RFL approval process

When the RFL is completed, it must be signed by the sponsoring minister and submitted to Cabinet for review and approval. Cabinet Operations will review the RFLs to ensure that the required elements are included.

Cabinet will determine whether the RFL is approved to proceed in the upcoming legislative session, and what priority it should be given in the drafting process. Following this determination, a record of Cabinet's decision is sent to the minister, the deputy minister, the ministry's legislation contact and Chief Legislative Counsel.

Government Caucus Committee review

Legislative initiatives must also be reviewed by the appropriate Government Caucus Committee. There are currently five such committees:

Health
Education
Communities and Safety
Natural Resources
Economy and Government Operations

The first review is based on the Three Column Document and will usually be conducted once drafting is underway. A second review is required before the Bill is finalized.

Stage 2 – Drafting the Legislation

The drafting process and the roles and responsibilities of the persons involved in that process do not vary greatly from one legislative initiative to another. However, there will be some differences depending on the individuals involved and the timelines for and the length and complexity of the project.

Generally, each project has a drafting team consisting of the ministry's instructing officer, the ministry solicitor and the Legislative Counsel assigned to draft the legislation.

Instructing officers

Instructing officers are the link between the sponsoring ministry and the drafter of the Bill. Ideally, there will be one instructing officer on any project, although in complex cases or in cases involving different bodies within the ministry or multiple ministries, more instructing officers may be required.

Instructing officers:

distill the ministry's various goals and policy decisions into drafting instructions;

provide those instructions to the drafter and convey to the appropriate ministry personnel any comments and queries of the drafter;

circulate drafts within the ministry and to other affected ministries and agencies;

collate comments on the various drafts and funnel them to the drafter;

instruct both the executive of the ministry and the minister respecting the content and effect of the Bill.

Experience has shown that the process works best if an instructing officer:

is a senior level official in the client ministry and has ready access to the deputy minister and the minister;

has the authority to make decisions or can obtain decisions quickly;

was directly involved in the policy development that led to the legislative solution being proposed;

has a good general knowledge of the subject matter of the proposal;

is readily available to the drafter on an ongoing basis;

has an aptitude for analysing legislation and ensuring that the draft accurately reflects the approved policy.

In addition to the instructing officer, a wide range of officials in the ministry may be involved behind the scenes in the preparation of a Bill to provide information to the instructing officials and to make policy decisions necessary for completion of the draft legislation.

Ministry solicitor

The ministry solicitor is a valuable member of the drafting team. Ministry solicitors bring the following expertise to the drafting process:

a thorough understanding of the business and operation of the client ministry;

significant knowledge of the law as it relates to that ministry;

knowledge of the legal background to the legislative initiative;

the ability to interpret and analyze legislation in light of rules of statutory interpretation and relevant court cases.

Legislative Counsel

The third member of the drafting team is the Legislative Counsel assigned as drafter. Drafting involves transforming government policy into a legislative form, and so the drafter's primary objective is to prepare a Bill that will achieve government's goals. Legislative Counsel are also required to balance this objective with the need to maintain coherent and consistent Provincial legislation, fairness and the integrity of the legal system.

In addition to balancing these objectives, the drafter provides advice on a number of matters, such as:

- whether the proposed provisions achieve the intended goals;
- whether there are gaps in the proposal that need to be filled with additional details or whether it is better to leave matters to be dealt with through general provisions;
- the appropriate form of the provisions;
- the inclusion of certain types of provisions in the Bill.

Drafters also provide a sense of perspective. They bring a fresh eye to the issues involved, largely unencumbered by the policy analysis that has preceded the RFL, and thus can provide fresh insights into the solutions proposed.

Furthermore, drafters are attuned to the need for clarity and certainty in Acts. This need is addressed, in part, by the drafter's appropriate application of drafting conventions and attention to the rules and principles that have been applied by the courts in interpreting statutory language. The goals and challenges of legislative drafting are set out in more detail in Part 2 of this Guide *(Principles of Legislative Drafting)*.

Legislative Counsel assess the legislative proposal from a legal perspective and, with specialists in the Ministry of Attorney General, are able to help ministry officials avoid provisions that might otherwise present legal problems, particularly as regards the Canadian constitution.

Legislative Counsel are assisted in their efforts by the legislative editors and other publications staff in the Office of Legislative Counsel. In addition to their many other duties, legislative editors:

- check draft Bills for grammar and spelling;
- review the content of draft Bills for clarity, precision, consistency of language and the logical expression of ideas;
- ensure that draft amendments correctly reflect the statute being amended;
- recommend required consequential amendments;
- ensure conformity with the rules and conventions governing the drafting and presentation of Bills.

Publications staff prepare the legislation that is ultimately published in the looseleaf edition of the statutes, the Annual Statutes and the Rules of Court and Related Enactments looseleaf.

Final policy review

Once an initiative is getting close to ready for introduction, the Ministry must prepare a second Three Column Document that provides an update on the intiative and, in particular, discloses the new policy issues that have arisen during the drafting process and how those issues have been resolved in the draft legislation. The Ministry must provide this new Three Column Document to the appropriate Government Caucus Committee and must schedule a hearing with that body at which time the new Three Column Document can be considered. Legislation must not proceed to Legislative Review Committee until after the Government Caucus Committee has had this last opportunity to consider and report out on this Three Column Document.

Final review of the draft legislation

After the Government Caucus Committee is satisfied with the policy direction taken in the draft Bill, and once the draft legislation is complete, the sponsoring minister or delegate must sign a Certificate of Readiness to indicate that the ministry is satisfied that the draft gives effect to the policy objectives reflected in the RFL. The signed certificate must be returned to Legislative Counsel before the draft is considered by Legislative Review Committee.

After receipt of the Certificate of Readiness, Legislative Counsel will provide the draft to Cabinet Operations, which will review the draft to:

ensure consistency with the RFL, and

ensure consistency with Cabinet, Caucus and Government Caucus Committee direction.

At the same time, the sponsoring ministry must provide Cabinet Operations with supporting materials, including:

a briefing note that gives an overview of the legislation, including areas that may be controversial and the outcome of any consultations;

section notes that describe each provision of the legislation and its purpose and effect (these notes will be used by the minister in debate on the Bill in the Legislative Assembly).

The draft will then be reviewed by the Legislative Review Committee, comprised of Cabinet ministers, the chairs of the five Government Caucus Committees and the Government Whip. Cabinet Operations staff and Legislative Counsel will assist in this review.

Bill preparation

If the draft legislation is approved for introduction in the Legislative Assembly, the Office of Legislative Counsel will prepare it in final Bill form. Depending on the content and size, the legislation will be prepared as:

- a separate Bill (all new Act are prepared in this way),
- a specific amending Bill,
- as part of a Ministry Statutes Amendment Act (amending a number of Acts that are the responsibility of a single minister), or
- as part of a Miscellaneous Statutes Amendment Act (which will be carried in the Legislative Assembly by the Attorney General).

The Bill will be signed by the Premier and the Lieutenant Governor, and printed by the Queen's Printer. Introduction of the Bill (First Reading) is coordinated by the Government House Leader in consultation with the Premier's Office and the sponsoring minister.

Special budget legislation process

Proposals for legislation to be introduced as part of the annual Budget (such as income tax, consumer taxes or tax credits or refunds) are initiated by the Minister of Finance. They are reviewed and finalized by the Treasury Board Staff and other officials in the ministry. These official provide drafting instructions directly to Legislative Counsel without any RFL or other approval process.

When a draft is finalized, the Minister of Finance provides Legislative Counsel with a signed Certificate of Readiness. The draft is then reviewed at a meeting involving staff from the ministry, Cabinet Operations and Legislative Counsel. After a final Cabinet level review, Bills will prepared as for other legislation.

Stage 3 – Enactment of a Law

Types of Bills

A proposed Act placed before the Legislative Assembly is known as a "Bill". There are 3 types of Bills that may be presented

Government Bills

Content: These Bills implement government policy and are drafted by Legislative Counsel.

Introduction: They are presented to the Legislative Assembly by the responsible minister.

Numbering: They are numbered consecutively for each Legislative Session, beginning with "Bill 1".

Members' Bills

Content: These Bills are prepared by an individual Member of the Legislative Assembly or on an individual Member's instruction. They are almost always proposals by Opposition Members and are drafted without assistance from Legislative Counsel. There is a constitutional restriction that Members' Bills cannot include appropriations or impose taxes.

Introduction: They are presented to the Legislative Assembly by the sponsoring Member.

Numbering: They are numbered consecutively for each Legislative Session, beginning with "Bill M 201".

Private Bills

Content: These Bills deal with matters of a private or local nature (for example, legislation establishing a charitable foundation).

Introduction: They are presented to the Legislative Assembly by an individual Member, usually a member of the government caucus. After introduction they proceed through a special committee process established under the Standing Orders of the Legislative Assembly, although final reading is given in the Legislative Assembly itself.

Numbering: They are numbered consecutively for each Legislative Session, beginning with "Bill Pr 401".

Government Bills and legislative process

Government Bills are intended to implement policy that has been approved by Cabinet.

Generally, Government Bills are introduced with the expectation that they will be approved by the Legislative Assembly and become law. In relatively rare cases, a Government Bill may be introduced as an "Exposure Bill". In this case, the Bill indicates proposed policy and is not intended for enactment in the current Session (in parliamentary terms, it is intended to "die on the Order Paper"). By introducing an Exposure Bill, the government is providing interested persons with an opportunity for input before a final Bill is re-introduced for enactment.

The process by which a Government Bill becomes law consists of the following steps:

First Reading
Second Reading
Committee Stage
Report Bill
Third Reading
Royal Assent
Commencement.

More detailed information can be found in the Standing Orders of the Legislative Assembly. These Standing Orders are the parliamentary procedure rules established by the Assembly, and are available on the Internet through the Legislative Assembly's homepage at:
http://www.leg.bc.ca/37th4th/4-7-37-4.htm

Bill 1 – a special case

Before describing the usual process by which a Bill is enacted, a special case deserves mention.

At the start of each Legislative Session, Bill 1 is introduced by the Attorney General. It is titled *"Act to Ensure the Supremacy of Parliament"*. The Act does not proceed past First Reading and its only content is a description of the historical importance of this Bill:

"This *Act to Ensure the Supremacy of Parliament* is an important part of our democratic process. The purpose of this Bill, and its introduction prior to consideration of the Throne Speech, is to perpetuate the established right of Parliament, through its elected representatives, to sit and act without leave from the Crown.

This Bill simply asserts the right of the Legislative Assembly to give precedence to matters other than those expressed by the Sovereign.

Introducing it at this point in the opening proceedings of this Legislative Assembly is a tradition that dates back to the reign of Elizabeth I when on March 22, 1603, Parliament first recorded this assertion of independence from the Crown for purposes of legislation."

First Reading

A Government Bill will be presented to the Legislative Assembly by a minister, usually the minister responsible for the relevant subject matter. In the case of a *Miscellaneous Statutes Amendment Act*, the Bill will be presented by the Attorney General.

The Standing Orders of the Legislative Assembly require advance notice of First Reading unless the Bill is accompanied by a signed Message from the Lieutenant Governor. In addition, section 54 of the *Constitution Act, 1867* requires a Royal Message in any case if the Bill contains any appropriation of public revenue or of a tax or impost. The standard practice in British Columbia for the past many years has been for government Bills to be presented by such a Message.

Despite the title "First Reading", there is no actual reading of the Bill. Instead, the minister is allowed a very brief (2 minute) general statement of intent respecting the Bill before making the motion *"That this Bill be now read a first time"*.

Second Reading

Second Reading is the "debate in principle" during which Members may speak for and against the general intent of the legislation. They may not debate the specifics of individual sections.

The Standing Orders establish rules respecting the length of time each Member may speak during Second Reading debate.

Committee Stage

The "committee" at this stage is the Committee of the Whole. That is, it is the full Assembly sitting without the Speaker. In Committee each Bill is debated on a section-by-section basis, concluding with a return to the beginning by a vote on the Bill's title.

This is usually the longest part of debate on proposed legislation. Each section is subject to a separate debate and a separate vote, although sections may be combined in a single vote – as in *"Shall sections 5 to 12 pass?"*.

The usual procedure is to begin at section 1 and proceed through to the end. On occasion, the sponsoring minister may move *"that sections [# to #] be stood down."* This has the effect of postponing debate on these sections. (For example, debate on the "definitions" section may be postponed until the major substantive provisions have been considered.)

It is at Committee stage that House Amendments to the Bill can be made. Any member is entitled to move an amendment and, although not required, advance notice of proposed amendments is often provided in the Assembly's "Orders of the Day" publication.

Certain amendments may be ruled out of order. *Parliamentary Practice in British Columbia*, McMinn (3rd ed.) provides that an amendment is inadmissible if it:

> is irrelevant or beyond the scope of the Bill;
> alters the principle of the Bill as agreed on Second Reading;
> destroys effect of sections already agreed to by the Committee;
> purports to amend Acts not related to the Bill;
> renders the clause unintelligible;
> amounts to a direct negative of the section being amended;
> imposes a charge, extends its object or purposes or alters or qualifies the destination of grants (unless it is a government amendment that is accompanied by a Message from the Lieutenant Governor);
> purports to delete a section;
> amends the preamble in the absence of an amendment to a section in the Bill;
> is frivolous.

As with Second Reading, the Standing Orders establish rules respecting the speaking time for each section motion and, if applicable, each amending motion.

[See Part 2 of this Guide (Principles of Legislative Drafting) for further information on the form and process for House Amendments.]

A caution – courts may use House debate to interpret legislation

Recently, courts have shown an increasing willingness to use House debates in statutory interpretation. While primary attention is given to ministerial statements, courts have been known on occasion to use comments of Opposition Members in determining the scope and application of legislation.

By way of example, if a Bill is drafted broadly but the minister in debate focuses on only one aspect or application of the proposed legislation, a court may read the scope of the legislation as being limited to this aspect or application.

Report Bill

If a Bill is amended, the Law Clerk of the Legislative Assembly arranges for a Report Bill to be prepared by the Office of Legislative Counsel and the Queen's Printer. A Report Bill shows the accepted amendments using a revision marking convention: deletions are indicated by strike through lines and additions are indicated by double underlining.

Third Reading

After Committee stage, the Assembly is called to order by the Speaker. The Chair of the Committee of the Whole reports the Bill "complete with amendment" or "complete without amendment", as applicable, and a motion for Third Reading is made. The motion may be debated, but generally there is little discussion at this point.

If the Third Reading motion passes, the Speaker announces, *"Bill [X], it is an Act."* It may be an Act, but it is not a statute until the next stage is complete.

Royal Assent

A Bill becomes part of B.C. law when it receives Royal Assent. Royal Assent is given by the Lieutenant Governor, who attends in the Legislative Assembly and sits in the Speaker's Chair. (If the Lieutenant Governor is unable to attend, the Chief Justice of British Columbia, acting as "Administrator" under the *Constitution Act, 1867*, can give Royal Assent.)

The Law Clerk reads the names of the Acts that have passed Third Reading. The Lieutenant Governor nods. At that moment the Acts become law. (It is the Lieutenant Governor's nod that gives effect to the enacting clause of an Act: "Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:".)

It is the Third Reading form of a Bill that becomes a statute.

Commencement: when an Act becomes effective law

An Act that is law is not necessarily in force. And, until it is in force, the Act has no legal effect – that is, the obligations it establishes are not mandatory, its rights and prohibitions are not enforceable and its powers are not exercisable. Legal effect begins when the Act "commences".

Direction as to when an Act comes into force will usually be found in the last section of an Act under the heading "Commencement". If the Act is silent, it comes into force on Royal Assent.

If there is a commencement section, it will provide that all or some of the provisions of the Act come into force at another time. There are a number of possibilities here. Provisions may:

> come into force on a specified future date;
>
> come into force when a specific event occurs;
>
> be brought into force by regulation of the Lieutenant Governor in Council, with the regulation either effective immediately on deposit with the Registrar of Regulations or on a later date specified by the regulation.

A commencement section may also provide that one or more provisions are "deemed" to have come into force on an earlier date. This is known as "retroactive commencement". A provision that is subject to such a provision operates to change the law as it applied in the past.

[Information on statute publication can be found in Part 5 of this Guide (Statute Publication).]

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PART 2

PRINCIPLES OF LEGISLATIVE DRAFTING

PREPARED BY:

Office of Legislative Counsel
Ministry of Attorney General
Province of British Columbia

August 2003

PART 2 – PRINCIPLES OF LEGISLATIVE DRAFTING

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PART 2
PRINCIPLES OF LEGISLATIVE DRAFTING

Goals, challenges and constraints

The goals

In drafting legislation, B.C. Legislative Counsel have two goals:

> to ensure the law says what it is intended to say;
>
> to communicate the law clearly and effectively to the persons who are affected by it, the officials who administer it and the judges who interpret it.

Satisfying both goals is often difficult.

Legislative Counsel write law. And law, in the end, does not mean what the sponsoring ministry or drafter intended it to mean, nor what the average reader might think it means. Rather, it means what the courts determine it means — and they will do this by applying the substantial body of legal rules known as the *principles of statutory interpretation*.

To put this in a constitutional context, the role of our courts as the final authority on the meaning of legislation is one of the most important components of the "rule of law". Law must be sufficiently certain that people who are subject to it can know their rights and obligations. Law does not change simply because a different executive government is in power. The courts that determine the meaning of law are independent of the executive.

In drafting legislation, Legislative Counsel are not merely putting words to proposed government policy. We are also giving a legal opinion, based on the application of the principles of statutory interpretation, that the words we are writing will have the intended legal effect.

At the same time, the Office of Legislative Counsel is committed to a drafting style that makes British Columbia legislation as understandable as possible to the people who use it. We have adopted the use of modern language, improved formats and a plain language writing style with the goal of making the law more accessible to both the courts and the general public.

The challenges: more readable law takes longer to draft

As discussed at the start of this Part, the goals of a legislative drafter are, first, to ensure that the law says what it is intended to say and, second, to communicate the law clearly and effectively. The first goal must always be given priority — correctness cannot be sacrificed for improved readability.

This means that the drafter must initially concentrate on understanding and giving legal effect to all elements of a proposed legislative scheme. Often the pressures of a Legislative Session are such that almost all of a drafter's time is consumed in getting to this point — leaving little opportunity to revise in light of the second goal. This extra time for revision is vital to producing more readable legislation.

The constraints

Statutory interpretation is the domain of the courts. This imposes a number of direct and indirect constraints on the style of legislative drafting.

Legal principles: The legal principles of statutory interpretation must always be considered. (A few of the most important principles are discussed below under the heading "Key principles of statutory interpretation".)

Historical style: While B.C. Legislative Counsel are committed to improving the readability of our statutes, changes in style must be approached cautiously. The historical drafting style used throughout the Commonwealth is the style on which the principles of statutory interpretation were developed. Changes in style must be carefully considered to ensure as far as possible that they do not imply changes in meaning.

Canadian Drafting Conventions: The Drafting Conventions established by the Uniform Law Conference of Canada have been largely adopted across the country. Consistency in style facilitates consistency in judicial interpretation. This is particularly important for legislation in relation to commercial activities that operate in an increasingly global environment — so that differences between jurisdictions are minimized.

Key principles of statutory interpretation

Three key principles of statutory interpretation constrain all legislative drafting.

Different words *mean different things*

This principle assumes that different words intend different legal effects. The assumption applies even if words are synonyms of each other. What would be "elegant variation" in other writing is legally dangerous in legislation.

For example, to refer to "the *purposes* of this Act" in one section, and then to the "*goals* of this Act" in another, would indicate that different meanings were intended. Or, to refer to "a person's *property*" in one provision, and then to "the person's *land*" in the next, would suggest that the first was to be read in its broader sense of what is known in legal terms as "real and personal property".

Every word has meaning

This principle assumes that every word of an enactment is intended to have legal effect. The assumption has a number of components.

Legislation will not say anything that it has already said

As expressed in the often-cited 1949 decision of the British Court of Appeal in Hill v. William Hill (Park Land Ltd.):

> ... though a Parliamentary enactment (like parliamentary eloquence) is capable of saying the same thing twice over without adding anything to what has been said once, this repetition in the case of an Act of Parliament is not to be assumed. When the legislature enacts a particular phrase in a statute the presumption is that it is saying something which has not been said immediately before. The rule that a meaning should, if possible, be given to every word in the statute implies that, unless there is a good reason to the contrary, the words add something which would not be there if the words were left out.

Legislation will not say anything that does not need to be said

Under this component there is an assumption that an Act will not repeat what another Act already provides, and that a regulation will not repeat what is provided in its authorizing Act. There is also an (arguably somewhat weaker) assumption that an Act will not merely restate the common law unless the Act is intended to replace the common law.

Words in one place but not in another intend a different effect

To describe this component by way of example, if one provision of an Act requires that something be done "as soon as possible" while another requires that it be done "as soon as reasonably possible", the assumption is that those are different requirements.

The practical effect of this principle and its components is that Legislative Counsel will avoid multiple statements of the same rule, we will resist restating the common law or another enactment, and we will ask why the instructions ask for variation between provisions.

Ordinary meaning in context (the overriding general principle)

In addition, there is the overriding general principle, as recently confirmed by the Supreme Court of Canada in *Rizzo & Rizzo Shoes*, [1998] 1 S.C.R. 27:

> "Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament."
>
> E. Driedger, *Construction of Statutes* (2nd ed. 1983)

The components of this statement direct that:

Words are to be given their ordinary grammatical meaning

Unless a word is specially defined in the enactment where it is used or in the Interpretation Act, the word will be taken to have its ordinary meaning. To determine this ordinary meaning, courts will often look to dictionaries for assistance.

Meaning will be drawn from the entire context of the enactment, not only from the single provision in which the words are found

A single section of an Act will not be read in isolation, as if it were a separate enactment. Rather, it will be read in relation to the other provisions of the Act. As a common statutory interpretation expression puts it, the provision will be read "within the 4 corners of the Act".

Meaning will be determined so as to best accord with the scheme of the Act, the object of the Act and the intention of Parliament

The court will consider:

what an Act does and how it operates
For example, one Act may be regulatory while another is empowering.

what appears to be the purpose of the Act
The purpose of an Act will usually be apparent from a consideration of the rights, restrictions, obligations and powers established by the Act. If an Act includes a preamble or purpose section, the court will take this into account when determining the purpose.

the intention of Parliament
This consideration has historically been far more restricted than it is today. In the past, intention could be drawn from the words of the Act and the apparent "mischief" at which it was aimed. If the legislation was enacted in response to recommendations of a body such as a Law Reform Commission, reference could be made to the Commission's report. Today, courts are likely to consider statements made by the sponsoring minister in presenting the legislation to Parliament (or even, in rare cases, statements made by opposition Members).

This general principle has many implications for legislative drafting. For example, Legislative Counsel will object to defining a word to give it its ordinary meaning, but will insist on a definition if there is to be some restriction on or extension of the ordinary meaning. We will discourage the use of preambles or purpose clauses. We will need to be aware of the whole "picture" of the Act we are drafting or amending — a change of language in one section may require parallel changes in a number of other sections, or an intended change in effect for one section may inadvertently change the effect of other sections.

The Interpretation Act

In addition to the common law rules of statutory interpretation, the *Interpretation Act* plays a significant role in determining how legislation is interpreted and, consequently, how it is written.

The general principle, established by section 2 of the *Interpretation Act*, is that every provision of that Act applies to every enactment "unless a contrary intention appears."

Among other things, the Act:

defines words that are used throughout our legislation;

determines how to calculate periods of time that are set by legislation;

gives general direction on how courts are to approach statutory interpretation;

establishes when legislation comes into force;

provides transitional rules that apply when one provision is repealed and another enacted in its place.

Legislative Counsel take the *Interpretation Act* into account in many ways. For example, we will avoid using a word that is defined in the *Interpretation Act* in a sense that differs from that Act's definition. We will draft in the present tense, relying on the Act's direction that this means the law continues to apply through time. We will generally draft in the singular, relying on the Act's direction that the singular includes the plural.

Making the law more readable

Plain language techniques

Even with the constraints described above, B.C. legislative drafting style is evolving to meet the goal of communicating the law clearly and effectively, and Legislative Counsel are committed to continuing this work.

The following are examples of techniques we use to make legislation more readable.

Words: A drafter will prefer words that are ordinary and familiar. Technical words will be used only if they are necessary to achieve precision or if they are familiar to the primary public audience for the legislation.

Sentence length: Shorter sentences will be preferred. Long sentences that include parallel provisions can be improved by paragraphing the parallels. (Paragraphing is the legislative equivalent to creating bulleted items like the list here.)

Sentence structure: The aim is to draft with sentence structures that assist the reader in understanding the elements of a legal statement. The person to whom the provision applies is identified at the start. Conditions and qualifications will not be embedded in the middle of a sentence. If possible, sentences will be stated in a positive form rather than the less-understandable negative.

Organization: Provisions will be grouped together and ordered in ways that are meaningful to the reader. For example, provisions may be grouped by topic and ordered chronologically.

Indicators: Sometimes readers want to read an entire Act, but more often they are looking for specific provisions. Indicators are provided to assist the reader in moving through the legislation. These include provisions that appear as part of the legislative text, such as Part headings. Indicators also include editorial additions such as marginal notes, tables of contents and running headers.

Document design: Much has been learned about how the design of printed material affects its readability. Attention is given to the relative readability of different fonts, the use of different fonts to signal different types of information, the use of white space to separate elements, and variation in white space to indicate levels of relationship between different provisions.

More readable laws may be longer laws

At the start of this Part, we cautioned that more readable laws often take longer to draft. They are also often longer in fact than their less readable equivalents.

For example, lawyers will understand a statement that: "An application for an order under this section may be made *ex parte*". To make this readable to persons without specialized training, explanation is needed: "A person may apply to the court for an order under this section without giving notice to any other party unless required by the court".

In other cases, long sentences need to be split into their conceptual components. So, for example, an older statute might have stated:

> **4** Where a person who does not reside, ordinarily reside or carry on business in the Province brings or sends into the Province or receives delivery in the Province of tangible personal property, the person shall immediately report the matter in writing to the commissioner, supply to the commissioner all pertinent information required by the commissioner in respect of the tangible personal property and pay to Her Majesty in right of the Province tax on the purchase price of the tangible personal property at a rate established under section 3.

Redrafted into a plainer style, this "brick wall" of text might become:

> **4** (1) This section applies to a person who
>
> (a) does not reside, ordinarily reside or carry on business in the Province, and
>
> (b) brings or sends tangible personal property into British Columbia, or receives delivery of tangible personal property in British Columbia.
>
> (2) A person referred to in subsection (1) must
>
> (a) immediately report the matter in writing to the commissioner,
>
> (b) supply to the commissioner all pertinent information required by the commissioner in respect of the tangible personal property, and
>
> (c) pay to the government tax on the purchase price of the tangible personal property at the rate in section 3.

Organization and structure of legislation

The importance of organization

Logical organization is key to clear communication. This is particularly so with legislation, which is often complex and lengthy. Readers need to be able to easily identify relevant sections or, at least, to determine where in the Act to look for the relevant sections.

Good organization has a number of aspects:

ordering (for example, chronologically);

grouping (for example, into Parts and Divisions);

indicating (for example, by the use of explanatory marginal notes);

indexing (for example, by the use of a table of contents).

Bills will have different organizations depending on whether they are intended to propose an entirely new Act or whether they are intended to amend existing legislation.

Sections: the legislative building blocks

Sections are the legislative building blocks — that is, they are the provisions that accomplish the legal effect of legislation. They establish the rights, duties, prohibitions and powers provided by law.

Each section will relate to a single topic. Approaches to separating topics may differ. Consider, for example, legislation that establishes a right of appeal and the procedure to be followed on the appeal.

> If the right of appeal is established by a new Act that is entirely or primarily focussed on the appeal, then each aspect of the appeal process (who can appeal, time limit, grounds for appeal, who can be a party) may best be described in a separate section.
>
> If the right of appeal is established by amendment to an existing Act that is of some length, a single section may be appropriate.
>
> If the appeal procedure is complex, a number of sections may be required and separation into a Part or Division will be considered.

Structure and format of legislation

Legislative Counsel have established a standard ordering of sections and other legislative components. This basic framework for British Columbia statutes allows readers who are familiar with the format to locate key provisions readily. For example, definitions for words used in the Act will be found in section 1, and any provision dealing with how the Act is to come into force will be found in the final section of the Act. The basic framework still allows considerable flexibility for organizing the main provisions of an Act to facilitate the goal of clear communication.

The table on the following page describes the standard order of legislative provisions in a new Act. As noted at the top of the table, not all types of provisions will be found in every Act.

The table is followed by a description of the key elements (structure) of an Act and the standardized numbering system used in B.C. legislation (based on the Drafting Conventions of the Uniform Law Conference of Canada). This description is presented in the format of a statute so that it can directly provide examples of the types of provisions it is describing.

STANDARD ORDER OF PROVISIONS IN A NEW ACT

[Note that not all of the following provisions are needed in each Act. This table describes the standard order of provisions if they are included.]

Introductory Provisions

Title	Descriptive of the general scope of the Bill
Table of Contents	Added editorially, lists Part and Division headings, section numbers and marginal notes
Enacting clause	Statement expressing the exercise of legislative authority

Preliminary Provisions (Sections)

Definitions	Section providing definitions of specific words or expressions used in the Act
Special general rules	General provisions that affect how the entire Act is to be read (such as purpose provisions, special interpretation rules or statements that restrict or extend the scope of the Act)

Main Provisions (Sections)

Substantive provisions	Sections that establish the substantive rules
Administrative provisions	Sections that establish administrative processes
Offences and other enforcement	Sections that establish offences, penalties and related matters
Regulation-making authority	Sections authorizing subordinate legislation

Final Provisions (Sections)

Consequential amendments	Any amendments needed for the purposes of the main provisions
Transitional provisions	Any special provisions needed for transition from the existing law
Repeal	Any repeals of other Acts
Commencement	Statement of when or how the Act is to come into force

STRUCTURE AND NUMBERING IN B.C. LEGISLATION

PART 1 – BASIC RULES

Structure of a section: one sentence

1 If a section contains only one sentence, it has no subsections.

Structure of a section: more than one sentence

2 (1) If a section contains more than one sentence, each sentence is a separate subsection.

(2) Despite subsection (1), a section in an older statute may contain more than one sentence. When a section containing 2 or more sentences is revised or amended, it will be split into subsections.

Structure of sentences: purpose of subdivisions

3 (1) A sentence may be subdivided into many levels.

(2) A sentence may be subdivided for one or more of the following purposes:

(a) improving readability;

(b) listing different matters;

(c) clarifying parallel application of an expression that

(i) precedes, or

(ii) follows

the subdivided expression;

(d) subject to consideration of readability, avoiding repetition of an expression that precedes or follows the subdivided expression;

(e) allowing specific reference in another provision;

(f) clarifying whether the subdivided expressions are to be read conjunctively or disjunctively.

(3) If a list is given in the format of

(a) "one or more of the following:",

(b) "any or all of the following:",

(c) "as follows:", or

(d) similar language ending in a colon,

the listed provisions end in semicolons, as in subsection (2).

(4) If a list is simply items with "and" or "or" ending the penultimate item, the listed provisions end in commas, as in subsection (3).

Structure of sentences: form of subdivisions

4 A sentence, either as a section without subsections or as a subsection within a section, may contain the following subdivisions:

(a) paragraphs, given consecutive lower case letters;

(i) subparagraphs, given consecutive lower case Roman numerals;

(A) clauses, given consecutive upper case letters;

(I) subclauses, given consecutive upper case Roman numerals.

Principle of avoiding too many subdivisions

5 (1) As a general drafting rule, a subsection or section should not be subdivided below the subparagraph level.

(2) If you find yourself drafting a subclause, the provision is getting too complex for reasonable readability.

How we refer to other provisions

6 If a provision refers to another provision of an Act, the reference is made by indicating the highest level of the other provision, as in the following examples:

(a) a reference to a provision in another section of the same Act or in another Act uses the section reference regardless of the level of provision referenced, as in "section 12 (2)" or "section 3 (4) (a) (iii)";

(b) a reference to a provision in another subsection of the same section uses the subsection reference, as in "subsection (2)" or "subsection (4) (a) (iii)";

(c) a reference to a provision in another paragraph of the same subsection uses the paragraph reference, as in "paragraph (a) (iii)".

PART 2 – NUMBERING

Numbering the sections and subdivisions

7 (1) Sections in new legislation are given consecutive arabic numbers: 1, 2, 3 and so on.

(2) Subsections are given consecutive arabic numbers within brackets: (1), (2), (3) and so on.

(2.1) The sentence subdivisions described in section 4 are given the consecutive numbering described in that section.

(2.2) If a new section is added by amendment between existing sections, it is given a decimal number: for example, sections 2.1, 2.2 and 2.3 could be added between sections 2 and 3.

(3) If additions between existing decimal numbers are needed, they are added using a decimal number in the next numerical group: for example, subsection (2.11) could be added between subsections (2.1) and (2.2).

(4) The principle of using decimal numbers to insert new provisions applies to all subdivisions of a sentence, as the following examples indicate:

(a) paragraphs (a), (a.1), (b), (c), etc.

(i) subparagraphs (i), (ii), (ii.1), (ii.2), (iii), etc.

Renumbering is very limited

8 (1) As a general rule, the existing numbering will not be changed when a provision is amended so, for example:

(a) if a subsection is added between subsections (1) and (2),

(i) the new subsection will not become subsection (2) with all the following subsections renumbered, and

(ii) instead, the new subsection will be numbered (1.1);

(b) if a subsection (4) was previously repealed and a new subsection is now being added,

(i) the new subsection will not be put in the existing gap as subsection (4), and

(ii) instead, the new subsection will either be added at the end of the section or inserted using a decimal number, as appropriate to the organization of the section.

(2) The rule against renumbering

(a) allows the legislative history of a provision to be tracked over time, and

(b) reduces the risk of missing changes in cross references.

(3) As an exception, if

(a) a provision is being repealed and replaced at the same time, and

(b) the replacement provision deals with the same subject matter,

the number of the repealed provision may be reused for the replacement.

Statute revisions as a means to renumbering

9 (1) If an Act has been amended to the point that its numbering is complex, for example, if

(a) it has many decimal additions, or

(b) many sections have been repealed,

the Act may be renumbered using the limited revision authority under the *Statute Revision Act*.

(2) The *Statute Revision Act* allows Legislative Counsel to revise a single Act, present the revision to a Standing Committee of the Legislative Assembly and have the revised Act replace the former Act.

Marginal notes indicate content

Each section in B.C. legislation will be headed by a bold "head note" (as they are called in the *Interpretation Act*). Legislative Counsel may refer to these as "marginal notes" — a reference to their historical placement in the margin outside the legislative text.

Legislative counsel consider marginal notes to be of great importance. They are intended to provide explanatory guides to the reader, who can use them to scan the legislation and identify relevant provisions. Marginal notes are used to create the Table of Contents at the beginning of an Act.

The *Interpretation Act* indicates that marginal notes are not to be used in the legal process of statutory interpretation.

> **11** (1) In an enactment, a head note to a provision …
>
> (a) is not part of the enactment, and
>
> (b) must be considered to have been added editorially for convenience of reference only.

On this basis, marginal notes are not amended by legislation. They are changed editorially by our Publications staff in consultation with Legislative Counsel. This is done most commonly in conjunction with a legislative amendment to the relevant section, so that the marginal note will better reflect the content of the section.

Cross reference explanations

Cross references are common in legislation. The most frequent uses are:

to indicate relationships between provisions:

> Despite section 12 of the *Insurance Act*, …..
> or
> Subject to section 14, …..

or

to make other provisions applicable:

> (1) Sections 23, 246, 580 to 582, 612 and 670 to 678 and Parts 24 and 25 of the *Local Government Act* apply to the city.

Unless readers have the cross-referenced Act to hand, they will often have no means of determining what is the intended effect of this cross reference. Even within the same Act, particularly if it is a large Act, cross references can be difficult for a reader.

Recognizing the problems this presented for readers, Legislative counsel recently proposed that section 11 of the *Interpretation Act* be amended to allow cross reference notes to be added to legislation on the same terms as marginal notes. In other words, they are not part of the legislation but are to be considered as added editorially for convenience of reference only. The proposal was accepted by government, put forward to the Legislative Assembly and enacted in 1999 and now appears as section 11 (2) of the *Interpretation Act*:

> (2) In an enactment, if a reference to a provision of the enactment or any other enactment is followed by italicized text in square brackets that is or purports to be descriptive of the subject matter of the provision, subsection (1) (a) and (b) applies to the text in square brackets.

The effect of this provision is to allow a brief description of the cross reference to be included, without affecting the interpretation of the provision in which it appears. As an example, a provision can now be presented as:

> (1) The following provisions of the *Local Government Act* apply to the city:
>
> section 23 *[transfer of Provincial tax money]*;
>
> section 246 *[joint exercise of powers with other municipalities]*;
>
> sections 536 to 538 *[boundary and transecting highways]*;
>
> Division 2 of Part 20 *[Licensing of Commercial Vehicles]*;
>
> Division 2 of Part 22 *[Protection of Trees]*;
>
> Part 24 *[Regional Districts]*;
>
> Part 25 *[Regional Growth Strategies]*.

Amending Bills

Only a small portion of any year's legislative program is directed to establishing entirely new Acts. By far the largest portion of the legislative program is in the form of "Amending Bills" that propose changes to existing legislation. The following is a brief description of the form, content and title of Amending Bills.

Form of Amending Bills

Our current amending provision format is designed to provide visual distinction between the amending provisions of the Bill and the provisions being amended by the Bill.

The section of a Bill that first amends an Act will include the full citation of the Act. Any following sections of the Bill that amend the same Act will not include that citation.

Generally the provisions of an Act are amended in ascending numberical order, beginning with the earliest provision being amended.

For example:

1 ***Section 1 (1) of the Cooperative Association Act, S.B.C. 1999, c. 28, is amended by adding the following definition:***

> **"subscriber"** means a person or eligible organization that makes and subscribes the memorandum that is filed with the registrar.

2 ***Section 6 (c) is amended by striking out*** **"sections 297, 298 and 313."** ***and substituting*** "sections 297, 298, 312 (2) and 313."

3 ***Section 12 (b) is repealed and the following substituted:***

> (b) show opposite the name of every subscriber the number of each class of investment shares, if any, taken by the subscriber and, for each class taken, whether the shares are without par value or the par value of those shares. .

4 ***Section 13 (2) is repealed.***

Content and title of Amending Bills

The content of an Amending Bill determines its title and organization. There are 4 recognized classes of Amending Bills.

Specific Act Amending Bills

Content: These Bills are directed at amending a specific Act. The only amendments to other Acts included in such a Bill are consequential to the specific Act amendments.

Title: The title is based on the title of the specific Act being amended, changing "Act" to "Amendment Act" and adding the year of introduction of the Amending Bill at the end of the title. If more than one Specific Act Amending Bill is introduced in the same Legislative Session, an indicating number is added:

Income Tax Amendment Act, 1998
Income Tax Amendment Act (No. 2), 1998

Organization: The Bill begins with the amendments to the specific Act, followed by any consequential amendments to other Acts.

Example: *The Cooperative Association Amendment Act, 2000* contained 45 sections amending the *Cooperative Association Act* and one section making a consequential amendment to the *Securities Act*.

Specific Topic Amending Bills

Content: These Bills amend a number of Acts in relation to a specific matter.

Title: The title indicates the matter being dealt with, and includes the year of introduction:

Pension Statutes Amendment Act, 1998;
Pension Statutes Amendment Act (No. 2), 1998

An exception is the Bill that makes the amendments required to implement the government's budget. It is given the title:

Budget Measures Implementation Act, (YEAR).

Organization: The Acts being amended are arranged alphabetically, with the amendments to each of those Acts arranged numerically according to the provisions being amended. A centred heading is provided for each amended Act.

Example: The *Adult Guardianship Statutes Amendment Act, 1999* amended 10 Acts, all in relation to adult guardianship matters.

Ministry Statutes Amending Bills

Content: These Bills amend a number of Acts in relation to various matters, but all in relation to the responsibilities of a single minister.

Title: The title is based on the ministry name and will include the year of introduction:

> *Finance and Corporate Relations Statutes Amendment Act, 2000.*

Organization: The Acts being amended are arranged alphabetically and numerically in the same manner as Specific Topic Amending Bills. Consequential amendments to Acts not under the responsibility of the minister are included at the end of the Bill.

Example: The *Forests Statutes Amendment Act, 2000* amended 3 Acts under the responsibility of the Minister of Forests and made consequential amendments to 3 other Acts.

Miscellaneous Statutes Amending Bills

Content: These Bills amend a number of Acts in relation to various matters that are not related and that are not within the responsibilities of a single minister. By convention, these Bills are limited to housekeeping and non-contentious amendments and are presented to the Legislative Assembly by the Attorney General.

Title: These have a standardized form of title and, since several Miscellaneous Statutes Amending Bills may be introduced during a single Legislative Session, an indicating number is added to all but the first of these Bills:

> *Miscellaneous Statutes Amendment Act, 2000;*
> *Miscellaneous Statutes Amendment Act (No. 2), 2000;*
> *Miscellaneous Statutes Amendment Act (No. 3), 2000.*

Organization: The Acts being amended are arranged alphabetically and numerically in the same manner as Specific Topic Amending Bills.

Example: The *Miscellaneous Statutes Amendment Act, 2000* included amendments to 30 Acts, with responsibility spread among 12 ministers.

Other included material

Consequential amendments

The matters covered by a proposed new Act may require that amendments be made to existing legislation. The same is true for Amending Bills. The required amendments are known as "consequential amendments".

In a new Act or a Specific Act Amending Bill (using the classification above), the consequential amendments will appear following the provisions of the proposed new Act or amendments to the specific Act, as applicable. They will be presented in Amending Bill format, with an italicized heading indicating each Act that is being consequentially amended.

Consequential amendments are arranged alphabetically according to the titles of the Acts they are amending and then, as for other amending provisions, in numerical order of the sections being amended. For example:

Consequential Amendments

British Columbia Railway Act

27 ***Section 5 of the British Columbia Railway Act, R.S.B.C. 1996, c. 36, is amended by adding the following subsection:***

(3) A subsidiary as defined in section 1 of this Act is a government corporation for the purposes of the *Budget Transparency and Accountability Act*.

Columbia Basin Trust Act

28 ***Section 14 (2) of the Columbia Basin Trust Act, R.S.B.C. 1996, c. 53, is repealed and the following substituted:***

(2) The *Financial Administration Act* and the *Budget Transparency and Accountability Act* apply to the corporation as if the corporation were a government corporation.

Explanatory Notes in First Reading Bills

In addition to the actual legislative content, a First Reading Bill will include short "Explanatory Notes". These notes are drafted by Legislative Counsel to provide a neutral description of the effect or purpose of the Bill or the provision for which the note is prepared.

A new Act usually has a single explanatory note describing the intent and scope of the Act. For example:

> **Explanatory Note**
>
> This Bill represents the British Columbia contribution to the consumer credit disclosure project currently underway across the country. The Bill establishes disclosure requirements applicable to credit arrangements and related advertisements, including credit arrangements relating to credit sales, credit cards and leases of goods, and provides for a range of enforcement mechanisms to support the new statutory requirement.

In an Amending Bill, a separate explanatory note will be provided for each section of the Bill. The explanatory note will identify the amended legislation and describe the proposed change. For example:

> **Explanatory Notes**
>
> SECTION 30: ***[Cooperative Association Act, amends section 139]*** adds section references to other decisions of an association that require a special resolution and must be filed with the registrar.
>
> SECTION 31: ***[Cooperative Association Act, amends section 140]*** adds "solicitor" of the association to the list of positions that may authenticate a notice, return or resolution for filing with the registrar.

Explanatory notes appear only in the First Reading version of a Bill. Recent First Reading Bills with Explanatory Notes can be found on the Legislative Assembly's website by looking at the "Legislative Proceedings" page and choosing the current or a previous Session's First Reading Bills. The Legislative Assembly's website is located at: http://www.legis.gov.bc.ca/

House Amendments

What they are

After a Bill has been introduced in the Legislative Assembly, it may be subject to amendment by the Assembly. Amendments by the Legislative Assembly are known as "House Amendments" and may be presented by any Member during the Committee stage of debate. They may be made directly from the floor without notice, or they may be proposed by advance notice in the Orders of the Day.

House Amendments are commonly used for 2 very different matters:

to correct typographical or other editorial errors that were not caught during the drafting process;

to make substantive changes in response to public or other input following introduction.

Legislative Counsel prepare most House Amendments that will be proposed by the sponsoring minister or another government Member. The Law Clerk of the Legislative Assembly is available to assist other Members.

How they are presented

A substantive amendment being proposed by the sponsoring minister must proceed through an approval process similar to that described in Part 1 of this Guide *(The Legislative Process)*. As for Bills, the *Constitution Act* requires that, if a House Amendment would establish an appropriation or a tax, it will be accepted only if it is accompanied by a Message from the Lieutenant Governor.

While advance notice of a proposed House Amendment is not required, as a matter of courtesy and in the interests of allowing debate to proceed more smoothly, notice is often provided in the Orders of the Day. For this, the proposing Member must deliver a signed copy of the House Amendment to the Clerk's Table in the Legislative Assembly while it is in Session. The House Amendment will then be printed in the Orders. The Member then need only rise and say *"I move the amendment to section # standing in my name in the Orders of the Day"*.

Any proposal to delete a section of a Bill is dealt with as a special case. This is because, under the rules of parliamentary procedure, each section is dealt with by a separate vote. To delete the section, the procedure is to defeat the vote on the section. However, in order to provide notice of an intended section deletion, the usual practice is to place a House Amendment proposing the deletion in the Orders of the Day — knowing that the House Amendment itself will never be proposed or voted on.

A caution: the need to consult Legislative Counsel

On occasion, the sponsoring minister may be prepared to accept a House Amendment proposed by an Opposition Member or a Member of the government caucus, either made on advance notice or directly from the floor.

If this happens, the strongly recommended procedure is that the minister:

not proceed with the House Amendment immediately;

instead postpone debate by moving that the applicable section of the Bill be "stood down";

contact legislative counsel.

The reason for this goes back to the basic rules of statutory interpretation. A single provision of an Act will not be read in isolation. Any changes must be consistent with the existing language of the Act and may require consequential amendments in other sections.

If legislative counsel are involved, the proposed House Amendment can be reviewed to ensure consistency with language used in other provisions of the Bill and to determine if any consequential amendments are required.

A cautionary example from a few years back: A minister's acceptance of a helpful Opposition House Amendment had the unfortunate effect of creating an unintended offence in another section. The Office of Legislative Counsel was not contacted, and the Bill went through Third Reading and Royal Assent before the issue could be raised. The result — it was not possible to bring the Act into force until a correcting amendment was made in the subsequent Legislative Session.

Format of House Amendments prepared by legislative counsel

The format for House Amendments is similar to that used for Amending Bills, but begins with an identification of the relevant section of the Bill and, if applicable, the provision of the existing law that the Bill is intended to affect.

Example:

Proposed Amendments to Bill

SECTION 1, ***in the proposed definition of*** **"private dwelling",** ***by adding the following paragraph:***

(c.1) repair or maintain a well, .

SECTION 4, ***by adding the following subsection:***

(2.1) If the minister considers this to be in the public interest, the minister may extend the time period under subsection (1) by up to 6 months.

SECTION 12, ***in the proposed section 146 (1) (c) of the Local Government Act, by deleting*** "12 months" ***and substituting*** "6 months".

Report Bill and inclusion in Third Reading Bill

If House Amendments are accepted by the Legislative Assembly, a "Report Bill" will be prepared before the Bill is presented for Third Reading. The Report Bill format shows the changes, using strike out to indicate text that has been deleted and double underline to indicate text that has been added.

If the Bill proceeds to Royal Assent, the changes will be incorporated into the "Third Reading" form of the Bill. If a House Amendment adds or deletes a provision (as in the example above), the Bill will be renumbered at the Third Reading stage to remove decimal additions or correct gaps in numbering.

A Guide to
Legislation and Legislative Process
in British Columbia

PART 3

GUIDE TO PREPARING DRAFTING INSTRUCTIONS

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Ministry of Attorney General
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PART 3
GUIDE TO PREPARING DRAFTING INSTRUCTIONS

About this guide

Legislative Counsel are responsible for drafting Government Bills. Directions to Legislative Counsel are given by means of drafting instructions included in a Request for Legislation (RFL) that has been approved by Cabinet. These instructions are often supplemented by further instructions provided during the course of drafting.

Drafting instructions are a process of communication. The proposed policy must be effectively communicated to Cabinet so that it can be properly considered for approval, and it must be effectively communicated to the drafter so that it can be placed into legislative form.

This guide is intended to provide ministry officials with information about preparing drafting instructions at both the RFL and drafting stages. The guide does this by:

first, providing some very general information about the purpose, form and content of drafting instructions;

then, in the form of a checklist, setting out key matters that will need to be considered.

We hope you find it useful.

Purposes of drafting instructions

The drafting instructions in an RFL form the basis on which a Government Bill is prepared. They describe *and* limit what the draft Bill is to contain.

Drafting instructions serve a number of purposes:

they provide Cabinet with a more detailed view of how the policy Cabinet is approving will be reflected in the legislation;

they allow the sponsoring ministry to think through its proposal in detail;

they provide other ministries and agencies an opportunity to consider how the proposal may affect the responsibilities of those ministries and agencies;

they guide the Legislative Counsel who drafts the Bill;
they serve as a benchmark for determining whether the draft Bill does what Cabinet authorized in approving the RFL.

What form should drafting instructions take?

Drafting instructions should be written in clear, straightforward language keeping the above purposes in mind.

This can be done by providing instructions in point form or as a plain prose account. With these forms, topic headings are often helpful.

In some cases, the instructing ministry may find that preparing instructions in the form of draft legislation is useful in thinking out its policy and administrative details in a coherent way. Drafting instructions in this form benefit from being annotated with comments and supplemented through meetings. At the same time, the ministry should understand that Legislative Counsel are responsible for the final legislation and are not bound to follow the organization or language proposed in the drafting instructions.

In all cases, substance is more important than form.

How much detail should be included?

The checklist covers a wide range of matters and prompts you to think about the details that will be needed to draft the legislation. Most of these details do not need to be specifically included in the written drafting instructions — but they will need to be developed for Legislative Counsel to complete drafting. Details are included so that you can begin thinking about them as early as possible, so that drafting can proceed expeditiously when approval has been received.

The instructions included in the RFL should find a middle ground between too much and too little detail:

on the one hand, they should be general enough to provide enough flexibility to allow minor policy questions to be worked out in the drafting process;
on the other hand, they should not be so generalized that they are only broad statements of policy objectives with only minimal indication of how the objectives are to be achieved.

For example, if the proposed legislation will include an appeal process, the RFL drafting instructions should indicate who is to be the appeal tribunal, who will be entitled to appeal and the proposed bases for appeal. Details that will be

required during the drafting process include the time and method for starting an appeal, whether an appeal acts as a stay of the original decision, who is to get notice of the appeal, who can appear before the appeal tribunal, the nature of the decision on an appeal and any special procedural rules.

The drafting process

After an RFL has been approved, the Legislative Counsel assigned to the file will contact the person identified in the RFL as responsible for the project. Whether drafting can begin immediately will depend on government priorities and the other drafting projects being carried by the Legislative Counsel.

The drafting process itself will depend on the legislation, the drafter and the time frame.

> For simple amendments, Legislative Counsel may well be able to prepare a full draft based on the RFL instructions. Any comments or queries will be highlighted on the draft. The legislation can then be finalized through a few exchanges of response and clarification, often without requiring a direct meeting between the instructing official and the drafter.
>
> In other cases, Legislative Counsel will prepare a "sketch" draft based on the RFL, identifying the significant issues that need to be addressed and asking for directions. Direct meetings between the drafter and the instructing official may be the speediest way of moving to a draft that reflects the ministry's intentions. The framework of the initial sketch may well change significantly through the course of this development.
>
> And in other cases (particularly for major Bills), Legislative Counsel will want to meet with the instructing official before beginning to draft. Drafts will be prepared, sent for review, discussed and revised through a process that may take a number of months.

Generally, the actual legislative drafting is a solitary process done by Legislative Counsel separately after receiving instructions by correspondence, telephone or meeting. In some cases, the time frame or drafter's style may mean that the instructing official will sit with the Legislative Counsel during the drafting process, providing direction on specific issues as they arise.

When Legislative Counsel consider that a draft is at the final or close-to-final stage, a "Certificate of Readiness" will be sent to the sponsoring ministry. When signed and returned to Legislative Counsel, the certificate will indicate that the draft is ready to proceed through the final approval processes.

As a final step before being prepared in Bill form, the draft legislation will be reviewed by legislative editors in the Office of Legislative Counsel. The

editors will consider such matters as format, grammar, style, cross references and consequential amendments, as well as identifying any provisions that may require further clarification. This edit may take place before or after the Certificate of Readiness is sent.

The Office of Legislative Counsel gratefully acknowledges the helpful guide prepared by David Elliot (a legislative drafter in private practice) and a comparable checklist under preparation by the federal Office of Legislative Counsel.

Checklist

Checklist item	Comments/Questions
Getting started	
The drafting team	*Who should provide the drafting instructions during the drafting process?* The Bill will be drafted by the assigned Legislative Counsel working closely with the ministry official or officials assigned to provide instructions to Legislative Counsel. The process of providing drafting instructions during the drafting process is one of communication. Experience has shown that the process works best if the instructing official is a senior level official in the ministry and has ready access to the deputy minister and minister, has the authority to make decisions or obtain decisions quickly, was directly involved in the policy development that led to the legislative proposal and has a good general knowledge of the subject matter of the proposal, is readily available to the drafter on an ongoing basis, and is able to provide the necessary support to the drafter and ensure that the draft accurately reflects the approved policy. (For this, the instructing official should have a "feel" for reading drafts, be able to see the ramifications of a proposed provision, be able to spot deficiencies in the draft and provide the drafter with the critical commentary needed to ensure that the draft legislation fulfills its intended purpose.) If the proposal is a major drafting project, the instructing official should be assigned full time and should have some project management skills. Because there are many legal issues that arise during the drafting process, the drafting team should include the Legal Services Branch solicitor for the sponsoring ministry. The solicitor should be given an opportunity to review the drafting instructions before they are finalized.

Checklist item	Comments/Questions
Getting started	
Preparing the drafting instructions	*A significant amount of time is required to prepare to proper drafting instructions, including time for* A discussion with the advising LSB solicitor regarding the problem and/or goal the legislation is to address. Consultation with other ministries that may be impacted by the proposal and a resolution of any conflicts that may become apparent. An analysis of who may be affected by the proposal and how to deal with persons who will not comply with it. An analysis of what legislation, in addition to the target legislation, may be affected and how it should be amended. A consideration of whether transitional provisions will be needed. An analysis of the regulations that will be required so appropriate authorizing language can be prepared. The drafting instructions that are attached to the RFL should reflect all of the foregoing along with a clear articulation of the problem to be addressed and/or the goal to be achieved, and an explanation of the policy direction created for that purpose.
Commitments and consultations	*Have public commitments been made that will affect the content of the proposed legislation?* The government or the minister may have made a specific commitment about how the proposed policy would be structured. This should be clearly indicated in the drafting instructions as it may significantly restrict the options available for framing the legislation. Even if formal commitment has been made, has the proposal been publicly discussed in specific terms that may affect how the legislation is framed? (For example, by referring to a new regulatory proposal as a "licensing scheme".) *Are there requirements or commitments for consultation that will affect the time required to prepare the legislation?* The RFL should clearly indicate what consultations are proposed. Commitments are often made regarding stakeholder consultations. These may have been specific to the legislative proposal or (as is the case for the Protocol of

Checklist item	Comments/Questions
Getting started	
	Recognition between the Provincial government and local governments as represented by UBCM) a general commitment to consult. In some cases, consultation is required. (For example, amendments to our *Income Tax Act* that will be administered federally must be reviewed by the federal government before they are finalized.) Consultations during the drafting process can significantly extend the time required to prepare draft legislation. Caution: if the purpose of the consultations is to reach a negotiated agreement on the wording that is to be reflected in the legislation, Legislative Counsel must be consulted before that wording is finalized. *Will other ministries be involved in the drafting process?* Often one ministry's proposal will affect the legislation or activities of other ministries, and consultation between them will be required during the drafting process. Again, this can extend the time required to prepare draft legislation.
Time needed to draft	*Have you consulted with Legislative Counsel on an estimated time for drafting?* Keep in mind that policy details will need to be addressed during the drafting process. Sometimes these apparently minor issues can be very complex, even when the final legislative statement is very short. The time required to prepare the draft legislation may be much greater than the ministry expects.

Checklist item	Comments/Questions
General matters	
Principal objectives	*What are the principal objectives of the proposed legislation?* It is essential that the RFL clearly articulates the precise purpose of the proposed legislation, so that Cabinet and the drafter can clearly understand what the legislation is supposed to achieve. It is often helpful if the problem that is being addressed and the proposed solution are separately identified. If an Amending Bills has a number of different objectives, the instructions should explain these separately in relation to the provisions to be amended.
Choices for implementing objectives	*How will the policy objectives be implemented?* Many legal mechanisms exist for implementing policy objectives. These include: creating administrative/public bodies (e.g., establishing a Crown corporation); conferring powers and duties on public officials (e.g., authorizing an official to make recommendations on policy or legislative changes in relation to a particular issue); establishing rules that regulate, prohibit, require or authorize particular activities (e.g., establishing a licensing scheme); providing sanctions for non-compliance with the rules (e.g., prosecutions, administrative penalties, loss of authority to undertake activities). As far as possible, the drafting instructions should provide a description of how the legislation will actually work, including the type of legal mechanism proposed, the related powers and duties and how compliance with the legislation is to be monitored and enforced. In some cases there may be more than one option for implementation, and the RFL may wish to identify these.

Checklist item	Comments/Questions
General matters	
Legal context	*What is the legal context for the proposal?* This involves an assessment of the law related to the proposal in order to ensure that the resulting legislation will operate effectively in its legal context. Issues to be considered include: Does the Legislature have constitutional authority to enact the proposed legislation? Is the proposal consistent with the Canadian Charter of Rights and Freedoms? Is it consistent with the Human Rights Code? Is the proposal consistent with important Acts of general application, such as the Freedom of Information and Protection of Privacy Act and the Financial Administration Act? Are there implications relating to NAFTA or other international trade matters? Are any of the proposed provisions unnecessary repetitions of provisions in Acts of general application, such as the Interpretation Act or the Offence Act? If there are provisions that vary from provisions in an Act of general application, is there a good reason for the difference? (Conflicting legislation needs to be specifically identified. It should not be dealt with by a general statement of "despite any other Act".) Does the proposed legislation deal with matters that are also dealt with by another Bill that is being prepared or has been introduced in the Legislative Assembly? (If so, the ministry responsible for the other Bill should be consulted about the overlap.) Is the proposal intended to respond to a specific court decision or legal opinion? (If so, this should be identified and provided to Legislative Counsel.)

Checklist item	Comments/Questions
Legislative Elements	
A basic list of questions "WWWWWHHHII?"	*What are the elements that go into a legislative provision?* In developing instructions for a specific provision, one should consider the following basic components: *Who?* — who is subject to the rule? *What?* — what is the basic rule? That is, what is it that the subject "may" do (empowering/permissive), "must" do (obligation), "may not" do (limiting power), or "must not" do (prohibition)? *Where?* — is there a place component to the rule? *When?* — is there a time component to the rule? *Why?* — what is the purpose of the rule? *How?* — is there a means/method aspect to the rule? *How much?* — is there a cost/charge aspect to the rule? *If?* — are there limits to when the rule will apply? *If not?* — are there sanctions if the rule is not followed?

Checklist item	Comments/Questions
Legislative Structure	
Options for structuring the proposed scheme	*How is the scheme to be implemented, as between the Act itself, the regulations under the Act and administrative instruments?* Many instruments are available to express and implement policy. They fall into 3 categories: Acts; regulations; administrative instruments (e.g., internal directives, guidelines, bulletins, decision documents). Processes *Acts* — are laws made through the parliamentary process of the Legislative Assembly. *Regulations* — are laws made under an express delegation in an Act. The Act will determine who may make the regulations and what the regulations can do. The process for giving effect to regulations is governed by the *Regulations Act*. *Administrative instruments* — do not involve legislative processes, but may be subject to particular legal requirements such as those relating to natural justice in public decision-making. The provisions of the Act, the regulations under the Act and any related administrative instruments must fit together in a coherent scheme that accords with the framework established by the Act.
Things that should be in the Act	*What is to be included in the Act?* Generally speaking, the Act contains the fundamental framework of the legislative scheme. The underlying principles expressed by that framework (either directly or by implication) will govern how the Act is interpreted by the courts and, thus, how it may legally be implemented. In addition to these fundamentals, the following additional matters are usually dealt with in the Act: controversial matters that should be addressed by the Legislative Assembly (including the matters identified in the *Extraordinary provisions in Act* section of these guidelines as being matters for special consideration

Checklist item	Comments/Questions
Legislative Structure	
	by Cabinet); provisions establishing the structure of public bodies or providing for senior appointments; provisions that substantially affect personal rights (e.g., search and seizure powers, penalties for serious offences, expropriation); provisions that establish a tax (including fees that raise revenues substantially above the cost of the services provided); transitional provisions required for implementing the new legislation; consequential amendments to other Acts.
Things that should or could be in regulations	*What is to be covered by the regulations?* Regulations should deal with matters of a legislative nature that are subordinate to the main principles of the Act. Regulations are appropriate to deal with: procedural matters (e.g., how to apply for a licence) matters that need frequent adjustment (e.g., establishing interest rates or licence fees) technical matters that involve scientific or other expertise (e.g., prescribing classes of organic pollutants) matters that cannot be finalized until there is some experience in working with the new legislation (e.g., establishing the time limits for when certain steps must be taken). [See also the "Regulation-making authority" section.]
Things that should be in administrative instruments	*What should be dealt with through administrative instruments?* Often many of the elements of a proposal (particularly a regulatory scheme) should in fact be dealt with by administrative instruments. Examples of administrative instruments include permits, licences, contracts, guidelines and directives. Examples of when it is appropriate to use administrative

Checklist item	Comments/Questions
Legislative Structure	
	instruments: legal requirements that are to be imposed individually on a case-by-case basis; non-binding guidelines for eligibility; internal directives on administrative matters.
Assignment of powers and duties	*Who should powers and duties be given to?* The nature of the power or duty usually determines who is best to exercise it. Regulation-making powers Most regulation-making powers are exercised by the Lieutenant Governor in Council. Ministers may be authorized to make regulations in relation to matters that are not of concern across government generally. (For example, establishing breeding stock districts under the *Bee Act*.) In some cases, a specialized tribunal may be authorized to make regulations in its area of expertise. (For example, the Workers Compensation Board is given the authority to make most occupational health and safety regulations.) If regulation-making authority is given to an outside individual or body, approval of the Lieutenant Governor in Council may be required. (For example, rules under the *Dentists Act*.) Judicial and quasi-judicial powers Judicial and quasi-judicial powers must be exercised with impartiality. The persons who exercise these powers should have the qualifications and security of tenure to ensure this impartiality. Administrative powers Most administrative powers are given to ministers who, in turn, have implied authority to authorize officials in their ministries to exercise the powers. (Caution: there are limits on this implied authority to delegate. See the following *"Delegation of authority"* section.) Except for very senior appointments or publicly sensitive matters, administrative powers should not be given to the Lieutenant Governor in Council.

Checklist item	Comments/Questions
Legislative Structure	
	Inspection and enforcement powers are usually given to classes of officials created to exercise these powers.
Delegation of statutory authority	*Are powers or duties under the legislation to be delegated?* As a starting point, if an Act establishes the powers or duties of a specified person or body, this person or body is considered to be acting as a delegate of the Legislature. Further delegation to another person or body is known as "subdelegation". The general common rule is that statutory powers cannot be subdelegated unless this is expressly authorized by statute. One important exception to the common law rule is the subdelegation authority of ministers. Ministers are considered to have an implied authority to subdelegate — except in relation to "quasi-judicial" functions. (Broadly speaking, these are functions related to decisions that directly affect the rights of specific persons on a case-by-case basis.) In relation to persons other than ministers, the rule is strictly applied by the courts — even when it causes administrative inconvenience — unless the context implies an authority to subdelegate. A court will often find subdelegation authority if the function is purely administrative (for example, a duty to publish a notice). For other functions, the court will be reluctant to find an implied authority. For example, there is no implied authority to subdelegate if the power: is legislative (e.g., making regulations), is quasi-judicial (e.g., making a determination of responsibility on the basis of evidence), or indicates that trust is being placed in the person's individual judgment or discretion (e.g., if particular expertise is required). If there is to be any subdelegation of duties or powers beyond the purely administrative, the proposed legislation should include an express authorization. For example, if subdelegation is to be authorized in relation to a specific power, the statute will confer the power on a specified person or body, authorize the specified person or body to delegate

Checklist item	Comments/Questions
Legislative Structure	
	those powers to another person, and most often, directly provide that this delegated authority is subject to any restrictions or conditions established in the delegation. As a final point, it is worth noting that section 23 of the *Interpretation Act* provides some limited authority for statutory powers and duties to be exercised by other persons without a delegation: in the case of a minister, the deputy minister or associate deputy minister may act for the minister (subject to the limit that these officials may not make regulations); in the case of a specified public officer, a person appointed to act in the office or the deputy of the public officer may act for the public officer.
Extraordinary provisions in Act	*Does the proposal include extraordinary provisions requiring specific Cabinet approval?* Certain types of provisions should be specifically identified in the RFL (usually because they are an extraordinary exercise of legislative authority). Cabinet must be made aware of them so that a proper assessment can be made of whether they should be included in the legislation. Examples: provisions that affect rights or freedoms protected by the *Canadian Charter of Rights and Freedoms* or that significantly affect other personal rights or freedoms; retroactive provisions; validation of provisions that have been struck down by a court; power to expropriate property; power to subdelegate regulation-making powers; power to grant exemptions from the legislation; provisions that exclude the jurisdiction of the courts; power to amend the Act or another Act by regulation (known as a "Henry the Eighth clause"); regulation-making powers for matters that are usually dealt with in Acts. *(See above: Things that should be in the Act)*; provisions that are to operate

Checklist item	Comments/Questions
Legislative Structure	
	"despite the *Freedom of Information and Protection of Privacy Act*", "despite the *Financial Administration Act*", or "despite the *Canadian Charter of Rights and Freedoms*". (Note that this would be a unique exclusion in B.C. laws and extraordinary constitutional rules apply.)
Extraordinary provisions in regulations	*Is it anticipated that the regulations to be made under the Act will include extraordinary provisions that should be identified in the RFL?* As with the Act itself, if it is expected that the regulations will involve the extraordinary use of legislative authority, the RFL should specifically request this authority and state why it is needed. Examples are regulations that would: affect rights or freedoms protected by the *Canadian Charter of Rights and Freedoms* or that would significantly affect other personal rights and freedoms; determine important matters of policy or principle; operate retroactively; exclude the ordinary jurisdiction of the courts; impose a tax (including fees that raise revenues substantially above the cost of the services provided); set penalties for offences that are higher than those established by the *Offence Act;* allow regulation-making authority to be subdelegated; provide an exemption from the general process established by the *Regulations Act;* amend the enabling Act or other Acts.

Checklist item	Comments/Questions
Specific issues and provisions	
Title	*What is the proposed title of the Bill?* In B.C., Bills are given one title. (In other jurisdictions there may be both a long and a short title.) A proposed title should reflect the content of the Bill in a neutral form. The title of an Act is used by courts in interpreting its provisions, so care is needed. The first word of the title determines an Act's placement in the statute books. Avoid beginning a title with general words such as "British Columbia", "BC", "Provincial" or "Government". You may consult the Office of Legislative Counsel when choosing a working title. For amending Bills, the basic form of title is established by convention. So, for example, the first 1999 Bill to amend the *Income Tax Act* would be titled *Income Tax Amendment Act, 1999*. If there were a second Bill that year amending the same Act, its title would be *Income Tax Amendment Act (No. 2), 1999*.
Preambles, purpose and principles clauses	*Is a preamble or purpose clause being considered?* Generally legislation can speak for itself and these are not needed. Indeed, because preambles and purpose clauses are used by courts in interpreting the legislation, they may have unintended effects unless they are carefully developed. Preambles and purpose clauses perform slightly different functions. *Preambles* provide background information about the circumstances giving rise to the legislation; may assist in supporting the constitutionality of the legislation; should be drafted sparingly to avoid creating confusion about the meaning of the legislation; are placed at the beginning of a Bill, as a beginning to the enacting clause. (For example, a preamble might describe the problem addressed by the legislation or identify the Commission report it is intended to implement.)

Checklist item	Comments/Questions
Specific issues and provisions	
	Purpose clauses indicate the intended results of the legislation; should highlight only the principal purposes; are included in the body of the legislation. *Is a guiding principles clause being considered?* These are clauses that provide direction as to how an Act is to be administered. (For example, section 2 of the *Child, Family and Community Service Act*.) Again, caution is required as these clauses may be used by the courts to establish powers or obligations beyond those initially contemplated by the legislation.
Application provisions	*Should the application of the legislation be expanded or confined in any way?* It may be necessary to expand or confine the application of legislation in a number of ways: geographically (e.g., to certain parts of the Province); temporally (e.g., to certain periods of time); by subject matter (e.g., by excluding matters that are regulated under another Act). However, application provisions often raise complex legal questions that must be more fully explored before the proposed application provision can be included in the legislation.
Regulation-making authority	*What regulations are anticipated for implementing the scheme?* Regulations are often a key component of the legislative scheme. Because they are a form of delegated law (someone other than the Legislature is making law), regulations must be authorized by an Act of the Legislature. A court will declare regulations invalid if they are beyond the authority granted by their governing Act. The formal legal description of this is that they are "*ultra vires*" the Act.

Checklist item	Comments/Questions
Specific issues and provisions	
	If a provision provides general authority for regulations, that authority will include the powers to make regulations referred to in section 41 of the *Interpretation Act*. These include regulations: providing for administrative and procedural matters; prescribing the amount of a fee authorized by the Act; in the case of regulations made by the Lieutenant Governor in Council, establishing offences for contravention and consequential penalties (up to the *Offence Act* maximum). For a legislative proposal that will have a substantial part of its scheme implemented by regulations, a solid idea of their anticipated content is needed when the Act itself is drafted — otherwise there is a risk that the Act will not provide the required regulation-making authority. While there may be a preference for having regulation-making provisions stated in broad terms, courts may take a narrow view of this broad delegation. This is particularly so if the regulations create penalties or interfere with property or civil rights. In these cases the courts require the regulations to be authorized by "clear and unambiguous language". Examples of provisions that require express authority include: automatic forfeiture of security deposits; disqualification for licence eligibility; authorization for property to be held for investigative purposes. As well, there must be clear authority if regulations are to discriminate (for example, by establishing different rules for different classes of persons). *Are there any special procedural requirements?* Generally, regulations are subject to the procedures established by the *Regulations Act*. Exceptions are very rare and should be specifically identified in the RFL. In some cases, additional procedural requirements are wanted. For example, the authorizing section of the Act might: require that the regulation be made only on the recommendation of a specified minister,

Checklist item	Comments/Questions
Specific issues and provisions	
	require that the minister consult with a specified body before any recommendation is made, or provide that a regulation cannot come into force until some specified time after it has first been published in the B.C. Gazette.
Senior appointments	*Will the Act authorize the Lieutenant Governor in Council to make appointments to a board, tribunal or other senior position?* If so, the appointment process will be conducted through the Agencies, Boards and Commissions Branch of the Ministry of Finance and Corporate Relations. This Branch should be consulted when preparing the drafting instructions.
Creation of a public body	*How is the public body to be structured?* The nature and structure of public bodies varies widely, depending on the functions they are to perform. The following are some of the questions to consider when creating a public body: What name will it have? What are its purposes? What is its membership? (How many, who, how appointed, term of office) Will it have executive officers (such as a chair and vice chair) and how are they to be appointed? Will it be a corporation? Will it be an agent of the government? Will it be able to enter into contracts, either in its own name or in the name of the government? Will it be able to acquire and dispose of land or interests in land, that is, override the limitation established by section 17 (1) (d) of the *Interpretation Act*)? What is its financial structure? (whether the Minister of Finance has authority over its accounting, who is to be the auditor, what borrowing and investment powers will it have) Will it report to the Legislative Assembly? Where will its headquarters be located?

Checklist item	Comments/Questions
Specific issues and provisions	
	Which minister is to be responsible? Will it have the authority to appoint its chief executive officer or will that authority rest elsewhere? Will its members and staff be part of the public service and subject to general public service legislation such as: *Public Service Act*, *Public Service Labour Relations Act*, and *Public Sector Pension Plans Act* (consultation with PSERC is required)? Who is to have dismissal authority for staff? (note section 22 of the *Public Service Act*) Will it be subject to Acts generally applicable to government bodies: Financial Administration Act, Financial Information Act, and Freedom of Information and Protection of Privacy Act? Proposals for creating public bodies often require specific approval outside the Request for Legislation process. This should be discussed with the Deputy Minister to the Premier.
Financial arrangements	*Will the legislation include specific provisions regarding the collection or disposition of public money?* Generally, the handling of public funds is dealt with under the *Financial Administration Act*. That Act will apply unless there is an express provision otherwise. Particular attention should be paid to the *Financial Administration Act* when creating a public body or office. The Ministry of Finance and Corporate Relations should be consulted about any proposal to: create a special account in the consolidated revenue fund; create a trust fund that would be held outside the consolidated revenue fund; create an on-going statutory appropriation; authorize borrowing, guarantees or indemnities. As well, that ministry should be consulted if the legislation will authorize the collection of money by the

Checklist item	Comments/Questions
Specific issues and provisions	
	government or an agency of the government (by way of tax, levy, assessment, fee, etc.) for anything other than recovery of costs incurred for providing services to the persons charged.
Information issues	*Will there be any special rules in relation to access to or disclosure of information?* The disclosure of information by government and public bodies is governed by the *Freedom of Information and Protection of Privacy Act*. In addition, common law principles of confidentiality and privilege should be considered. The Policy Division of the Information, Science and Technology Agency (ISTA) should be consulted in advance regarding any provisions that would restrict access under the Freedom of Information and Protection of Privacy Act, or allow access to personal information otherwise protected by that Act.
Sanctions for non-compliance	*Will penalties or other sanctions be needed to ensure compliance with the legislation?* Most legislation is enforced by the imposition of sanctions for non-compliance. The 3 basic methods of imposing sanctions are: prosecution of offences in the courts (using the procedures of the *Offence Act*); offence ticketing schemes (e.g., by regulation under the *Offence Act*); imposition of administrative penalties (such as monetary penalties, licence suspensions or disqualifications). If sanctions are to be included, the rule of law requires that the legislation should be capable of being enforced in practice, and should not be written in the expectation that it will be enforced only in limited circumstances not described in the legislation (that is, as a matter of discretion). Section 5 of the *Offence Act* creates a general offence for contravention of an Act or regulation. For new

Checklist item	Comments/Questions
Specific issues and provisions	
	legislation, Legislative Counsel encourage a statement that excludes the application of this section, and recommends that the proposed offences be specifically identified in the Act. Penal sanctions Section 4 of the *Offence Act* provides a standard penalty of $2 000 or 6 months in jail, or both. Any other penalty must be specifically identified in the legislation. Provisions establishing penal sanctions should be reviewed to ensure that: they will be effective in obtaining compliance; they are supported by effective enforcement mechanisms (such as inspection and search powers); the sanctions are appropriate to the seriousness of the non-compliance; the sanctions have sufficient flexibility to allow fair treatment of accused persons depending on the circumstances of the non-compliance. In many cases, the Criminal Justice Branch will need to be consulted to ensure that Crown Counsel can effectively present the evidence required to prove the offence. (Consider, for example, the complex scheme of certificates required to allow photo radar to be enforced.) Ticketing schemes to enforce penal sanctions An offence provision may be enforced through the violation ticket process under the *Offence Act*. In order to use this process, the provision must be designated in the "Violation Ticket Administration and Fines Regulation" under the *Offence Act*. If the proposed legislation is to be enforced by means of this process, consultation with the Criminal Justice Branch will be required. (Note: the Attorney General is required to consult with the Chief Judge of the Provincial Court before a provision is prescribed as a ticketable offence.) Administrative sanctions Administrative sanctions may require a significant legislative framework. (For example, a scheme that allows suspension or cancellation of licences will need to deal with matters such as notice, opportunity to make

Checklist item	Comments/Questions
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	presentations and appeals.)
Appeals and reviews	*Is there to be a process for appeals or reviews of decisions made under the legislation by officials or public bodies?* *Judicial review* As a general rule, statutory decisions are reviewable by the B.C. Supreme Court if they affect legal rights, duties or eligibility for benefits. The governing legislation is the *Judicial Review Procedure Act*. Judicial reviews are limited to the legality of the decisions (e.g., jurisdiction, procedural fairness) and are not reconsiderations of the merits of the individual case. Restricting access to judicial review is extraordinary, and the legislative "privative clauses" required to do so are read narrowly by the courts. *Appeals* A right of appeal exists only if it is expressly granted by legislation. Appeals generally deal with the merits as well as the legality of decisions, and the right of appeal will set out the bases on which an appeal can be made. Appeals may be made to a court (either the Provincial Court or, more commonly, the Supreme Court), an administrative tribunal established to hear appeals under a number of Acts, an administrative tribunal established specifically for the purposes of the Act, or an administrative tribunal established on a case by case basis for each appeal. The Cabinet Directive on Legislation and Regulation Policies establishes a general rule that provision for appeal rights should be included in legislation and that the RFL should indicate whether the appeal is to be to the courts or to an administrative tribunal. Issues that will need to be considered in establishing an appeal process: what decisions may be appealed who may appeal them on what basis may they be appealed

Checklist item	Comments/Questions
Specific issues and provisions	
	what body will act as the appeal tribunal what is the time limit for bringing an appeal how is an appeal started who must be given notice of the appeal who is entitled to participate in (be a party to) the appeal what is the nature of the appeal (e.g., a completely new hearing or an appeal based on the record) what authority does the appeal tribunal have in making its decision how are the costs of the process to be covered *Other reviews* It may also be appropriate to create other review mechanisms. For example, the *Forest Practices Code of British Columbia Act* requires that appealable decisions go through a review process before they can go to the Forest Appeals Commission. Reviews may be mandated by: authorizing original decision makers to reconsider their decision, establishing another body to conduct reviews, or authorizing an existing body to conduct reviews (e.g., the Commercial Appeals Commission). Reviews generally concern all aspects of the original decision, as if a new decision were being made.
Dispute resolution mechanisms	*Should mechanisms be established for resolving disputes arising under the legislation?* If the legislation will likely involve disputes between parties with different interests (e.g., a scheme that grants exclusive area rights to licence holders), consideration should be given to including provisions for resolving these disputes without going to the courts. Examples of dispute resolution mechanisms are negotiation, mediation, neutral evaluation and arbitration. The Dispute Resolution Office (Ministry of Attorney General) is available to provide advice.

Checklist item	Comments/Questions
Specific issues and provisions	
Repeals	*Do any Acts or regulations need to be repealed as a result of the new legislation?* If a new Act is proposed to replace an existing Act, the existing Act will need to be repealed.
Consequential amendments	*Are any consequential amendments required?* New legislation often affects existing legislation, requiring consequential amendments to other Acts. If the required changes are limited to housekeeping matters (such as changing section cross-references), these can be left to the drafting stage. However, if consequential amendments for substantive changes are required, these should be identified in the RFL. For legislation that is administered by other ministries, consultation with these ministries will be required. Note that consequential amendments may be required for legislation that is not yet in force, or for other Bills that are currently before the Legislative Assembly.
Transitional provisions	*Will any transitional provisions be needed to deal with matters arising before the new legislation comes into force?* Transitional provisions may be needed for matters that arose under legislation that is being repealed or amended by the new legislation, or matters that need to be dealt with before the new legislation can be effectively implemented. Many of these matters are governed by the general provisions of sections 35 and 36 of the *Interpretation Act*. However, these provisions may not be appropriate in all cases and may not cover all transitional issues that need to be dealt with. Examples of matters requiring consideration: regulations made under the previous law; rights or benefits granted under the previous law;

Checklist item	Comments/Questions
Specific issues and provisions	
	offences committed under the previous law; transfers of assets and liabilities; the creation of a replacement administrative body for one existing before the new legislation comes into force; appeals, reviews or other administrative proceedings under the previous law that have not been finalized at the time the new legislation comes into force; judicial proceedings involving the application of previous law. *Regulations* — Regulations made under existing legislation should be reviewed to determine if they are authorized to continue under the new legislation. If the entire Act is being repealed and replaced, it is best to likewise repeal and replace the previous regulations. In all cases, existing regulations should be repealed if they are not intended to continue under the new legislation. This will avoid doubts as to their status.
Coming into force	*When should the legislation come into force?* An Act begins to operate as law when it "comes into force". Under the *Interpretation Act*, legislation is considered to have come into force at the very start (immediately after midnight) of the day on which it comes into force. There are a number of options for when legislation may come into force. If an Act is silent, its provisions will come into force on the date of Royal Assent. If one or more provisions are to come into force on another date, the commencement section of the Act will provide for this by establishing that they are to come into force on: a specified date after Royal Assent (e.g., January 1, 2000) *the date on which specified circumstances occur* (e.g., the date on which another Act comes into force) *a date set by regulation* (appropriate, for example, if regulations must be enacted in order for the legislation to be implemented) *retroactively to a specified date*

Checklist item	Comments/Questions
Specific issues and provisions	
	(in which case, the legislation actually comes into force on another date determined in accordance with the above options but, once it is in force, is deemed in law to have come into force at an earlier time). Different provisions of an Act may come into force on different dates. As well, if an Act provides that it comes into force "by regulation of the Lieutenant Governor in Council", different provisions may be brought into force on different dates and by different regulations.
Internal reviews	*Are there issues which will require internal reviews during the drafting process?* In some cases, Legislative Counsel are required to have draft legislation reviewed by another office, committee or ministry. The most common circumstances where this arises are: Legislation that establishes an offence penalty that is substantially greater than the *Offence Act* penalties or the penalties in comparable legislation. *referral to the Criminal Justice Branch.* Legislation that will place new demands on the court system (for example, a provision requiring courts to give a decision within a specified period of time) *referral to the Court Services Branch.* Legislation that will establish an exception to the *Freedom of Information and Protection of Privacy Act* or that will allow access to personal information that would otherwise be protected by that Act *referral to ISTA (the Information, Science and Technology Agency).* Legislation that will establish a "statutory immunity" that provides full or partial protection from legal proceedings *referral to the Statutory Immunity Committee.* In most cases, Legislative Counsel will simply copy a draft to the reviewing agency for referral purposes. Legislative Counsel may or may not be involved in the policy discussions between the reviewing agency and the instructing ministry. There is usually a more formal process with the Statutory Immunity Committee: a representative of the instructing ministry and the drafting Legislative

Checklist item	Comments/Questions
Specific issues and provisions	
	Counsel will be invited to attend the committee meeting at which the draft is discussed.
Internal consultations	*Will any other ministers, ministries or government agencies have to be consulted on drafting the Bill?* Ministers, ministries or agencies who are consulted on the policy proposals leading up to an RFL should also be given the opportunity to comment on the drafting instructions. This is particularly important when consequential amendments are being proposed to legislation administered by another ministry. The following should be considered in determining whether consultation is required: Is legislation administered by another ministry affected by the proposed legislation? Are programs provided or administered by another ministry affected by the proposed legislation? If the proposed legislation assigns duties or powers to another minister, is there agreement on the extent of these duties or powers? Have the affected ministers, ministries or agencies had an opportunity to review the drafting instructions? Are there any outstanding issues that need to be addressed before final drafting instructions can be given? By way of example, if the legislation would allow new applications to the Provincial Court, program costs of the Ministry of Attorney General will be impacted and the proposal should be referred to that ministry for review. *Will other ministries or government agencies be participating in the drafting process or reviewing the draft legislation as it progresses through the drafting process?* If so, Legislative Counsel should be advised at the start of the drafting process as to who will be the responsible officials for these other ministries or agencies.
External consultations	*Will any consultation with other governments, non-governmental bodies or the general public be needed on drafting the legislation?*

Checklist item	Comments/Questions
Specific issues and provisions	
	RFLs and draft legislation are confidential Cabinet documents and come within the Cabinet document protection of section 12 (1) of the *Freedom of Information and Protection of Privacy Act*. At the same time, consultations with persons outside government may be wanted. The sponsoring ministry may undertake outside consultations unless Cabinet has directed otherwise in approving the RFL. If outside consultations are not intended to be public, this should be made clear to the persons with whom the consultation is taking place. Is it expected that outside consultation may significantly affect policy (which may require further Cabinet approval)? Legislative Counsel should be advised if drafts are to be shared outside government, as this may affect whether legal advice is provided within the drafts themselves or separately. (Caution: the drafts should not be shared in Bill form. In Bill form, issues of parliamentary privilege are added to those of Cabinet confidentiality.) *Is the proposed legislation a good candidate for confidential review by outside lawyers?* For a number of years, members of the B.C. Branch of the Canadian Bar Association have assisted Legislative Counsel by providing confidential reviews of draft legislation. The process is coordinated through the Legislation and Law Reform Committee, a standing committee of the B.C. Branch with a staffed position of Legislation and Law Reform Officer. These reviews are provided without remuneration and the lawyers participating are bound by an undertaking of confidentiality which prohibits them from disclosing any aspect of their engagement, even to other members of their firm, without the government's consent. The reviews are particularly useful in relation to: private law legal issues such as wills and estates, where expertise within the Legal Services Branch is limited, and practice areas where there are existing C.B.A. Sections, such as Municipal Law and Administrative Law.

Checklist item	Comments/Questions
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	Legislative Counsel may suggest that the sponsoring ministry consider such a review.
Outstanding matters	*Are there any matters that still need to be resolved?* It is sometimes not possible to resolve all key policy issues that should be dealt with by Cabinet without unduly delaying the start of drafting. In these cases, the RFL must: identify the outstanding policy issues, indicate how they are to be resolved during the drafting process, and provide a time line for this resolution.
Implementation	*How should implementation deadlines be established?* Although it is not possible to predict how a Bill will proceed through the Legislative Assembly, proposed implementation dates are often set as part of the RFL. When determining these, consideration must be given to: the work required to prepare any necessary regulations or amendments to regulations, and any administrative, staffing and training arrangements that will be needed. *Is Legislative Counsel involvement required for implementation?* Legislative Counsel services will be required: if the legislation is to come into force by regulation (Such a regulation is not prepared automatically. It must be requested by the responsible ministry within the time frame required to bring it before the Lieutenant Governor in Council before the required implementation date), and if regulations are needed for implementation (Under section 5 of the *Interpretation Act*, such regulations may be enacted in advance of the

Checklist item	Comments/Questions
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	legislation coming into force). After legislation has been bought into force, Legislative Counsel generally do not provide advice on its interpretation. Ministries should look to their advising Legal Services Branch solicitor for assistance in such matters.

A Guide to
Legislation and Legislative Process
in British Columbia

PART 4

STATUTE REVISIONS

PREPARED BY:

Office of Legislative Counsel
Ministry of Attorney General
Province of British Columbia

August 2003

PART 4 – STATUTE REVISIONS

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PART 4
STATUTE REVISIONS

Most Acts in force in British Columbia are "revised statutes" that were prepared in the course of a "statute revision". This Part describes the authority and process for statute revisions.

What is a statute revision?

A statute revision is the process by which an existing Act is revised to

consolidate amendments that have been made over time, and

modernize language and style.

A revision is intended to do this without changing the legal effect of the law.

A little history

Canadian jurisdictions have historically undertaken statute revisions every 10 to 20 years. In British Columbia, we have had revisions in 1996, 1979, 1960, 1948, 1936, 1924, 1911, 1897, 1888, 1877 and 1871.

Before 1992, each revision was separately authorized by an Act that would establish the position of Revision Commissioner and authorize this official to prepare a revision that would be presented to the Legislative Assembly.

In 1992, a new process was established for British Columbia. At the time it was unique, but has since been adopted by a number of other Canadian jurisdictions.

The Statute Revision Act

The 1992 *Statute Revision Act* (now part of the 1996 Revised Statutes of British Columbia) established a continuing statute revision authority.

Under the Act, Chief Legislative Counsel is given authority to prepare revisions. A revision may be

a **"general revision"** of all public Acts and any Private or Local Acts the Chief Legislative Counsel considers should be included, or

a **"limited revision"** of all or part of any one Act.

General revisions are equivalent to past statute revisions. Limited revisions are a new concept that should allow the Provincial statutes to be maintained in a better state of consolidation, without engaging the resources and expense of a general revision.

What a revision can do

The *Statute Revision Act* establishes the authority that can be used in revising an Act. Among the most important, it allows the revising Legislative Counsel to:

- combine Acts or their provisions;
- alter the numbering and the arrangement of Acts or provisions;
- rename an Act or portion of an Act;
- alter language and punctuation to achieve a clear, consistent and gender neutral style;
- make minor amendments to clarify the intent of the Legislature, to reconcile inconsistent provisions or to correct grammatical or typographical errors;
- omit Acts or provisions that are spent or repealed or that have no legal effect.

The most obvious changes accomplished by a revision arise from the renumbering authority — an Act will be revised to eliminate gaps that were created when provisions were repealed and to remove the decimal provisions that resulted when provisions were added. To allow readers to track these numbering changes, a concordance is prepared and published with the revision.

What a revision cannot do

The *Statute Revision Act* does not authorize Legislative Counsel to make substantive changes to the law. Indeed, we approach the limited authority to make "minor amendments" extremely cautiously. That authority will generally be used only to correct grammatical or typographical errors or to clarify relationships between provisions where these are clear from a careful reading of the legislation.

A revision does not allow changes to deal with provisions that have unresolvable ambiguities or that are no longer administratively workable. These changes require statutory amendment by the Legislature.

The revision process

Legislative Counsel prepare a revision in consultation with the ministry responsible for the Act.

When the revision is completed, it is given to the Clerk of the Legislative Assembly for presentation to the appropriate Select Standing Committee of the Legislative Assembly. In June 2000, the Legislative Assembly assigned statute revision as an on-going responsibility of the Select Standing Committee on Parliamentary Reform, Ethical Conduct, Standing Orders and Private Bills.

Legislative Counsel attend the Committee to present the revision for approval. If the Committee recommends that the revision be brought into force, an official copy will be deposited with the Clerk of the Legislative Assembly. The official copy is signed by the Lieutenant Governor and countersigned by the Clerk. The revision may then be brought into force by regulation.

The legal effect of a revision

The *Statute Revision Act* establishes the legal effect of a revision:

> when a revision comes into force, the pre-existing provisions that are incorporated in the revision are repealed to the extent they are incorporated in the revision;
>
> a provision included in a revision is deemed to have come into force on the day that the original provision came into force.

In addition, there is an express statement to address the general rule of statutory interpretation that a change in language is intended to be a change in the law. [For further discussion of the rule, see *Part 2: Principles of Legislative Drafting* of this Guide.] The Act overrides the rule by requiring that a revision be interpreted "as a consolidation of the law contained in the Acts and provisions replaced by the revision".

The current general revision: R.S.B.C. 1996

The current general statute revision presented the Public Acts of British Columbia as they stood on December 31, 1996. Initial work began more than 6 years earlier.

From the beginning, the Office of Legislative Counsel had a central goal: to present the law in "a clear, consistent and gender neutral style" as directly authorized by the *Statute Revision Act*.

To this end, key objectives of the statute revision were:

- to replace the traditional "he includes she" approach with a gender neutral drafting style;
- to replace unnecessarily legalistic terms and writing style with more common forms of expression;
- to redesign the statute format using plain language principles.

After presentation to the Standing Committee at the end of February 1997, the revision was brought into force on April 21, 1997. The 2 month period between Committee review and effective date allowed the Queen's Printer to print the revised statutes and prepare a searchable electronic publication.

Limited revisions

Although other jurisdictions have followed British Columbia in providing authority for limited revisions, we have been the first to use this authority.

The initial limited revisions have been of Private Acts that were recently amended. As one example, the *Vancouver Foundation Act* establishes the statutory role of one of our Province's most important and respected philanthropic organizations. The Act dated back to 1950 and had been amended a number of times since. The limited revision authority allowed the Office of Legislative Counsel to work with the Vancouver Foundation to consolidate and modernize its legislation, while respecting the historical origins of the Foundation.

It is expected that, in the future, the limited revision authority will allow Legislative Counsel to deal effectively with individual Acts that have been subject to significant amendments without having to engage in the lengthy process of a general revision.

How to identify a revised statute

In the case of a general revision, revised Acts will be assigned a chapter number within the *"Revised Statutes of British Columbia"*. So, for example, the *Statute Revision Act* citation is now the "*Statute Revision Act*, R.S.B.C. 1996, c. 440".

In the case of a limited revision, the Act will be assigned a chapter number according to the year in which it is enacted. So, for example, we now have the *Vancouver Foundation Act*, S.B.C. 2000, c. 32. The Act will be published in the *Statutes of British Columbia* bound volume for 200, where it is referenced as a statute revision Act. In addition, references on page 1 of the Act and in the running head will indicate that is it a statute revision Act.

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PART 5

STATUTE PUBLICATIONS

PREPARED BY:

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Ministry of Attorney General
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PART 5 – STATUTE PUBLICATIONS

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Government statute publications

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PART 5
STATUTE PUBLICATIONS

This Part describes government statute publications. (In addition to these publications, there are a number of private publishers who produce print, electronic and internet legislation materials.)

Government statute publications

Government statute publications are produced through co-operation between the Office of Legislative Counsel, the Office of the Clerk of the Legislative Assembly and the Queen's Printer.

By way of example, the following describes the usual preparation and publication process for government Bills:

> Original preparation of the Bills is done within the Office of Legislative Counsel, which will send the First Reading form of the Bill to the Queen's Printer for printing.
>
> The Office of the Clerk is responsible for changes to Bills as they proceed through the Legislative Assembly. These changes are made by the Office of Legislative Counsel under the direction of the Office of the Clerk.
>
> The Office of Legislative Counsel will then use the Third Reading form of the Bills as the basis for preparing the annual Statutes of British Columbia volume, including tables and other reference materials that are included in the annual volume.

Official status of Queen's Printer publications

The Queen's Printer is the government agency charged with responsibility for printing the official versions of the statutes. This responsibility is established by the *Queen's Printer Act*:

> under section 3 of the Act, the Clerk of the Legislative Assembly is required to provide the Queen's Printer with certified copies of the Acts of the Legislature as they receive Royal Assent during a Legislative Session;
>
> under section 5 of the Act, the Queen's Printer must print those Acts "as soon as practicable" after the close of each Legislative Session.

Under section 25 of the *Evidence Act*, copies of statutes printed by the Queen's Printer can be accepted by courts without further proof of authenticity. Given this official status, considerable care and time is needed to prepare the printed statutes.

Print publications

A number of print publications are available:

Bills;

Individual Acts;

Annual bound volumes of the *Statutes of British Columbia* (as enacted during the Legislative Sessions for that year);

The looseleaf consolidation of the Revised Statutes of British Columbia.

The looseleaf consolidation: This includes all provisions of Public Acts of the Province that are in force, as they read on the "consolidation date". (This date will be indicated on the first page of each Act that was updated for the most recent consolidation.) A Table of Legislative Changes follows each Act that has been changed or added to the consolidation. The start of the Table indicates any changes that were enacted on or before the consolidation date but were not in force on that date. *[A caution: Further amendments may have been made since the consolidation date and these will not appear in the table.]*

To obtain print copies: Printed copies of all British Columbia legislation may be obtained from Crown Publications. Their contact information is:

Crown Publications Inc.
521 Fort Street
Victoria BC V8W 1E7
phone: (250) 386-4636
fax: (250) 386-0221
http://www.crownpub.bc.ca
e-mail: crown@pinc.com

Electronic publications

Since 1992, Queen's Printer has used Folio VIEWS infobase software to prepare electronic versions of the looseleaf consolidation and Third Reading Bills. Available in CD-Rom and diskette formats, the electronic publication has powerful search engine capabilities.

To obtain electronic copies: The electronic statutes are available through Crown Publications or the Government Publication Services. The contact information for the latter is:

Government Publication Services
phone: (250) 387-6409
toll-free: 1-800-663-6105
http://www.publications.gov.bc.ca

Internet publications

Bills: The Legislative Assembly website provides access to Bills for the most recent Legislative Session and a number of previous Legislative Sessions, including:

First Reading Bills with their explanatory notes;

Report Bills showing amendments made by the Legislative Assembly;

Third Reading Bills.

The website also includes a "Progress of Bills" table. This is useful, for example, if you wish to find out what was said in debate on a particular Act. The table indicates the dates on which the Bill was debated in the Legislative Assembly, and you can then access the Hansard record for that day through the same website.

The Legislative Assembly information is available at:

http://www.legis.gov.bc.ca/index.htm
[choose: "Legislative Proceedings and Documents" and follow the links]

Consolidated Acts and other information: An Internet version of the looseleaf consolidation is available to the public through a link from the Legislative Assembly website to the Queen's Printer:

http://www.legis.gov.bc.ca/index.htm
[choose: Legislation > Revised Statutes of British Columbia, 1996]

The website also provides amendment information that can be used to identify legislative changes made after the consolidation date. Order in Council resumes and a list indicating which ministry is responsible for each Act.

The Queen's Printer currently has a project underway that is intended to provide Internet access to a statute consolidation that is much more current than the printed looseleaf consolidation.